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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 868.

FRANK E. DEWOLF, ISABELLA C. DEWOLF AND HORACE M. BARNES, APPELLANTS,

vs.

FLORENCE W. HAYS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED NOVEMBER 19, 1886.

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1 *Bill of Complaint.*

In the Superior Court of the State of California in and for the City and County of San Francisco. In Equity.

FLORENCE W. HAYES, a citizen of the State of California, Plaintiff,

vs.

FRANK E. DE WOLF and ISABELLA C. DE WOLF, Citizens of the State of New York, and Horace M. Barnes, a Citizen of the State of Rhode Island, Defendants.

The plaintiff, for cause of action against the defendants, alleges:

I.

That she is a citizen of the State of California, and has been for five years last past.

II.

2 That defendants, Frank E. De Wolf and Isabella C. De Wolf, are citizens of the State of New York, as she is informed and believes; and that defendant, Horace M. Barnes, is a citizen of the State of Rhode Island.

III.

That heretofore, to wit, on the 12th day of December, A. D. 1872, she was the owner by purchase with her own separate funds of the undivided one-half of certain lands situated in Fresno county, California, bounded and described as follows, to wit: All those certain lots, pieces, and parcels of land bounded as follows: Sections twenty-four, twenty-eight, thirty, thirty-four, thirty-six, and the south half of section twenty, all in township fourteen south, range twenty-one east, Mount Diablo base and meridian; and also section six, in township fifteen south, range twenty-one east, Mount Diablo base and meridian.

IV.

3 That she purchased said described lands from Frank E. De Wolf and Isabella C. De Wolf, and in part payment of the same gave her promissory note, secured by a mortgage upon said lands.

V.

That subsequent to the making of said note and mortgage, and after said note became due, said Frank E. De Wolf and Isabella C. De Wolf transferred and assigned without consideration said note and mortgage to J. B. Haggin, who thereafter, at the request and for the use and benefit of said Frank E. and Isabella C. De Wolf, commenced an action to foreclose the same; that said action of foreclosure was subsequently dismissed upon plaintiff executing and delivering to said J. B. Haggin a deed for said lands in said mortgage described.

VI.

That in all of said transactions, and particularly in the taking of said deed, said Haggin acted as the agent of said Frank E.
4 and Isabella C. De Wolf.

VII.

That thereafter the said J. B. Haggin, at the request of said Frank E. and Isabella C. De Wolf, and as their agent, without consideration, conveyed, by deed dated February 1st, 1877, said described lands to Joseph De W. Dimmick, who received the same as agent and in trust for said Frank E. and Isabella C. De Wolf.

VIII.

That thereafter, on or about the 12th day of February, 1877, said Joseph De W. Dimmick conveyed without consideration, and at her request and that of Frank E. De Wolf, said described lands to defendant, Isabella C. De Wolf.

IX.

That thereafter, to wit, on or about the 5th day of March, A. D. 1884, said Frank E. and Isabella C. De Wolf, without consideration, conveyed by deed said lands, except section 30, to Horace M. Barnes, of Bristol, Rhode Island.

5 X.

That said Horace M. Barnes has been for many years and was at the time of making said deed the confidential legal adviser and friend of said Frank E. and Isabella C. De Wolf and took said deed at their request and for the purpose of covering up and concealing their title to the same, the better to cheat and defraud complainant.

XI.

That plaintiff executed and delivered said deed to J. B. Haggin, as the agent of said Frank E. and Isabella C. De Wolf, at the urgent solicitation of her husband, John J. Hayes, who was at the time an invalid, unable to attend to business, and who importuned plaintiff to make said deed, urging as a reason that he was unwilling to die and leave her involved in a litigation which might result in
6 her pecuniary ruin, and complainant, yielding to his entreaties and persuasions, consented to and did make said deed.

XII.

That said Frank E. and Isabella C. De Wolf well knew at the time of the execution of said deed to J. B. Haggin that the same was made by complainant under the influence of her said husband and because of his persuasion and solicitation and was not her free and voluntary act.

XIII.

That said Frank E. and Isabella C. De Wolf soon after the execution of said deed by said Dimmick to them departed — the State of California and have since remained absent until in or about the month of February, 1884, when said Frank E. De Wolf returned to the State of California, where he remained for a few weeks and then again left said State.

XIV.

That since the conveyance by plaintiff to J. B. Haggin of
7 said described lands the defendants, Frank E. and Isabella C. De Wolf, have been in possession of said lands, receiving and enjoying the rents and profits.

XV.

That the amount of rents and profits so received plaintiff is unable to state, but avers that the same amounts to a large sum of money.

XVI.

That she is still indebted to defendants, Frank E. and Isabella C. De Wolf, the amount of said note and interest herein alleged, less the amount of rents and profits of said land belonging to her and received by said defendants De Wolf, which she is ready and willing to pay and has been at all times.

XVII.

That the value of the interest in said lands sought to be recovered herein is of the value of $100,000.

Wherefore plaintiff prays for an accounting between her-
8 self and Frank E. De Wolf and Isabella C. De Wolf; that upon payment by her or tendering the amount found due to them upon such accounting they be decreed to convey to her by good and sufficient deed an undivided one-half interest in the lands herein described; that the deed made by Frank E. and Isabella C. De Wolf of date March 5th, 1884, as to plaintiff, be declared fraudulent and null and void.

For general relief and costs of suit.

BEN. MORGAN,
Attorney for Plaintiff, 330 *Pine Street, San Francisco.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Florence W. Hayes, being first duly sworn, deposes and says that she has read the foregoing complaint and knows the contents of the same; that it is true of her own knowledge, except as to the
9 matters therein stated upon her information and belief, and as to those she believes it to be true.

FLORENCE W. HAYES.

Subscribed and sworn to before me this 7th day of May, 1884.
[NOTARIAL SEAL.] LEE D. CRAIG,
Notary Public.

Endorsed: Filed 7th day of May, A. D. 1884. William T. Sesnon, clerk. J. D. Ruggles, deputy clerk.

10 *Affidavit of Florence W. Hayes.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

FLORENCE W. HAYES, Plaintiffs,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Florence W. Hays, being first duly sworn, deposes and says that she is the plaintiff in the above-entitled action; that heretofore, to wit, on the 7th day of May, 1884, she commenced an action in the above-named court against the defendants, Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, by filing a complaint in the clerk's office and the issuance of a summons thereon; that
11 said complaint was duly verified and was in the following words and figures, to wit:

In the Superior Court of the State of California in and for the City and County of San Francisco. In Equity.

FLORENCE W. HAYES, a Citizen of the State of California, Plaintiff,
vs.
FRANK E. DE WOLF and ISABELLA C. DE WOLF, Citizens of the State of New York, and Horace M. Barnes, a Citizen of the State of Rhode Island, Defendants.

The plaintiff, for cause of action against the defendants, alleges:

I.

That she is a citizen of the State of California and has been for five years last past.

II.

That defendants, Frank E. De Wolf and Isabella C. De Wolf, are citizens of the State of New York, as she is informed and be-
12 lieves, and that defendant, Horace M. Barnes, is a citizen of the State of Rhode Island.

III.

That heretofore, to wit, on the 12th day of December, A. D. 1872, she was the owner, by purchase with her own separate funds, of the

undivided one-half of certain lands situated in Fresno county, California, bounded and described as follows, to wit: All those certain lots, pieces, and parcels of land bounded as follows: Sections twenty-four, twenty-eight, thirty, thirty-four, thirty-six, and the south half of section twenty, all in township fourteen south, range twenty-one east, Mount Diablo base and meridian, and also section six, in township fifteen south, range twenty-one east, Mount Diablo base and meridian.

IV.

That she purchased said described lands from Frank E. De Wolf and Isabella C. De Wolf, and in part payment of the same
13 gave her promissory note, secured by a mortgage upon said lands.

V.

That subsequent to the making of said note and mortgage, and after said note became due, said Frank E. De Wolf and Isabella C. De Wolf transferred and assigned, without consideration, said note and mortgage to J. B. Haggin, who thereafter, at the request and for the use and benefit of said Frank E. and Isabella C. De Wolf, commenced an action to foreclose the same; that said action of foreclosure was subsequently dismissed upon plaintiff executing and delivering to said J. B. Haggin a deed for said lands in said mortgage described.

VI.

That in all of said transactions, and particularly in the taking of said deed, said Haggin acted as the agent of said Frank E. and Isabella C. De Wolf.

VII.

That thereafter the said J. B. Haggin, at the request of said
14 Frank E. and Isabella C. De Wolf, and as their agent, without consideration, conveyed, by deed dated February 1st, 1877, said described lands to Joseph De W. Dimmick, who received the same as agent and in trust for said Frank E. and Isabella C. De Wolf.

VIII.

That thereafter, on or about the 12th day of February, 1877, said Joseph De W. Demmick conveyed, without consideration and at her request and that of Frank E. De Wolf, said described lands to defendant, Isabella C. De Wolf.

IX.

That thereafter, to wit, on or about the 5th day of March, A. D. 1884, said Frank E. and Isabella C. De Wolf, without consideration, conveyed by deed said lands, except section 30, to Horace M. Barnes, of Bristol, Rhode Island.

X.

That said Horace M. Barnes has been for many years, and was at the time of making said deed, the confidential legal
15 adviser and friend of said Frank E. and Isabella C. De Wolf, and took said deed at their request and for the purpose of covering up and concealing their title to the same, the better to cheat and defraud complainant.

XI.

That plaintiff executed and delivered said deed to J. B. Haggin, as the agent of said Frank E. and Isabella C. De Wolf, at the urgent solicitation of her husband, John J. Hayes, who was at the time an invalid, unable to attend to business, and who importuned plaintiff to make said deed, urging as a reason that he was unwilling to die and leave her involved in a litigation which might result in her pecuniary ruin; and complainant, yielding to his entreaties and persuasions, consented to and did make said deed.

XII.

That said Frank E. and Isabella C. De Wolf well knew at the
16 time of the execution of said deed to J. B. Haggin that the same was made by complainant under the influence of her said husband and because of his persuasion and solicitation, and was not her free and voluntary act.

XIII.

That said Frank E. and Isabella C. De Wolf, soon after the execution of said deed by Dimmick to them, departed the State of California, and have since remained absent until in or about the month of February, 1884, when said Frank E. De Wolf returned to the State of California, where he remained for a few weeks and then again left said State.

XIV.

That since the conveyance by plaintiff to J. B. Haggin of said described lands the defendants, Frank E. and Isabella C. De Wolf, have been in possession of said lands, receiving and enjoying the rents and profits.

17 XV.

That the amount of the rents and profits so received plaintiff is unable to state, but avers that the same amounts to a large sum of money.

XVI.

That she is still indebted to defendants, Frank E. and Isabella C. De Wolf, the amount of said note and interest herein alleged, less the amount of rents and profits of said land belonging to her and received by said defendants De Wolf, which she is ready and willing to pay and has been at all times.

XVII.

That the value of the interest in said lands sought to be recovered herein is of the value of $100,000.

Wherefore plaintiff prays for an accounting between herself and Frank E. De Wolf and Isabella C. De Wolf; that upon payment by her or tendering the amount found due to them upon such
18 accounting they be decreed to convey to her, by good and sufficient deed, an undivided one-half interest in the lands herein described; that the deed made by Frank E. and Isabella C. De Wolf, of date March 5, 1884, as to plaintiff be declared fraudulent and null and void.

For general relief and costs of suit.

BEN. MORGAN,
Attorney for Plaintiff, 330 *Pine Street, San Francisco.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Florence W. Hayes, being first duly sworn, deposes and says that she has read the foregoing complaint and knows the contents of the same; that it is true of her own knowledge, except as to the matters therein stated upon her information and belief, and as to those she believes it to be true.

19 FLORENCE W. HAYS.

Subscribed and sworn to before me this 7th day of May, 1884.
[SEAL.] LEE D. CRAIG,
Notary Public.

That all of said named defendants reside out of this State, the said Frank E. De Wolf and Isabella C. De Wolf being, as she is informed and believes, residents of the city of New York, in the State of New York, and the said Horace M. Barnes being a resident of the town of Bristol, State of Rhode Island.

That said defendants and each of them are proper and necessary parties to said action.

Wherefore deponent prays for an order that the service of the summons in the above-entitled action be made by publication of the same.

FLORENCE W. HAYS.

Subscribed and sworn to before me this 5th day of June, 1884.
[NOTARIAL SEAL.] C. J. MERRILL,
Notary Public.

20 Endorsed: Filed Jan. 14, 1884. William T. Sesnon, clerk, by Wm. J. Rightmire, deputy clerk.

21 *Order for Publication of Summons.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

FLORENCE W. HAYS

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES.

In the above-entitled cause it appearing by the affidavit of the plaintiff, Florence W. Hays, that the defendants are non-residents of the State of California, and that the above-entitled action has been commenced in this court and the summons issued; and it further appearing from said affidavit that a cause of action exists in favor of said plaintiff and against said defendants, and that they are proper and necessary parties to said action; and it further appearing therefrom that all of said defendants are absent from the
22 State of California, upon motion of Ben. Morgan, Esq., counsel for plaintiff, it is ordered and adjudged that service of the summons in the above-entitled action be made upon the defendants by publication of the same in the "Daily Evening Bulletin," a newspaper printed and published in the city and county of San Francisco, State of California, at least once a week for the period of two months.

It is further ordered and adjudged that said named newspaper is the one most likely to give notice of the pendency of said action to the defendants, and is hereby designated as the one in which said publication shall be made.

It is further ordered and adjudged that a copy of the summons and complaint in said above-entitled action be forthwith deposited in the post-office, directed to the said Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, defendants, at their place
23 of residence, viz., Frank. E. De Wolf and Isabella C. De Wolf, in the city of New York, State of New York, and Horace M. Barnes, in the town of Bristol, State of Rhode Island.

T. H. WILSON, *Judge.*

Endorsed: Filed June 14, 1884. William T. Sesnon, clerk, by William J. Rightmire, deputy clerk.

24 *Notice of Motion to Set Aside Order.*

In the Superior Court of the City and County of San Francisco, State of California, Department No. 6.

FLORENCE W. HAYS, a Citizen of the State of California, Plaintiff, *vs.* FRANK E. DE WOLF and ISABELLA C. DE WOLF, Citizens of the State of New York; and Horace M. Barnes, a Citizen of the State of Rhode Island, Defendants.	No. 12350.

Please take notice that on Friday, the twenty-ninth day of August, 1884, at ten o'clock in the forenoon of that day, or as soon there-

after as counsel can be heard, we shall move said court, at the court-room of said department No. 6, in the new city hall, in said
25 city and county of San Francisco, for an order as follows:

I. Setting aside, vacating, and annulling the order dated June 12th, 1884, for publication of the summons in the above-entitled action.

II. Setting aside, vacating, and annulling the order of same date directing a copy of the summons and complaint in said action to be deposited in the post office, directed to said defendants at their place of residence.

III. Setting aside, vacating, annulling, and declaring void any and all proceedings had or taken under or pursuant to said orders or either of them.

Said motion will be made on the following grounds, viz:

1st. That the affidavit of plaintiff on file, upon which said order was based, does not allege or show that said plaintiff has a good cause or any cause of action against said defendants or either of them.

2nd. That it does not appear by said affidavit or by the
26 complaint that summons can be served by publication.

3d. That it affirmatively appears by said affidavit and by the complaint that summons cannot be served by publication in this action.

4th. That it appears by said affidavit and by the complaint that the said suit is an action *in personam*, to have and determine which this court cannot acquire jurisdiction by publication of summons or otherwise than by personal service of summons within this State or by their voluntary appearance in said action.

5th. That said order appears to have been made a long time, to wit, seven days, after the affidavit was verified.

6th. That the affidavit for publication of summons is indefinite and uncertain as to the residence of defendants, nor does it sufficiently appear therefrom that defendants are absent from the State of California.

27 7th. That there is no evidence that defendants were absent from the State of California at the time when said order for publication of summons was made.

8th. That said order directs but one copy of summons and complaint to be deposited in the post office, while it appears that there are three absent defendants.

9th. That said order directs but one copy of summons and complaint to be directed to said Frank E. De Wolf and Isabella C. De Wolf, in the city of New York, State of New York.

10th. That said order does not direct said copy of summons and complaint to be enclosed in an envelope, nor does it direct the postage thereon to be paid.

Said motion will be made upon the affidavit of plaintiff on file herein, dated June 5th, 1884, and upon the said order directing publication of summons, the complaint on file herein, and also upon the records of said court and the papers on file in said action.

28 Take notice further that we appear herein specially for the purposes for this motion, and that we do not appear for any other cause or purpose whatever, nor do we enter the appearance of the said defendants generally, nor do we intend to appear for said defendants further or other than as above stated.

LLOYD BALDWIN,
LOUIS T. HAGGIN,
Attorneys for Defendants.

To Ben. Morgan, Esq., attorney for plaintiff.

(Endorsed:) Service of the within notice is hereby acknowledged this 21st day of August, A. D. 1884. Ben Morgan, attorney for plaintiff. Filed Aug. 22, 1884. William T. Sesnon, clerk, by J. J. Farrell, deputy clerk.

29 *Order that Motion be Submitted after Filing of Briefs of Counsel.*

Department No. 6.

In the Superior Court, City and County of San Francisco, State of California,

AUGUST 29TH, 1884.

Present: Hon. M. H. Edmonds, judge.

FLORENCE W. HAYS, Plaintiff,

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

In this action a motion of the defendants herein for an order setting aside, vacating, and annulling the order dated June 12th, 1884, for publication of summons in the above-entitled action, setting aside, vacating, and annulling the order of the same date, directing a copy of the summons and complaint in said action to be deposited in the post office, directed to said defendants at their place of residence, and setting aside, vacating, annulling, and de-
30 claring void any and all proceedings had or taken under or pursuant to said orders or either of them, came on this day regularly to be heard, Ben. Morgan, Esq., appearing as attorney for the plaintiff, and Lloyd Baldwin, Esq., for said defendants; and the court having heard the arguments of counsel therein, and counsel for plaintiff desiring to file a brief thereon, and counsel for defendants desiring to answer the same, it is ordered that counsel for plaintiff have to file a brief within five days, and that counsel for defendants have to file a brief in reply thereto within five days thereafter, and that said motion be then submitted to the court for consideration and decision.

I hereby certify the foregoing to be a full, true, and correct copy of an order entered on the minutes of said superior court, department No. 6, in the above-entitled cause.

31 Attest my hand and the seal of said superior court this 18th day of April, 1885.

JAS. J. FLYNN, *Clerk*,
[SEAL.] By D. J. GORDON, *Deputy Clerk*.

32 *Order Submitting Motion.*

Department No. 6.

In the Superior Court, City and County of San Francisco, State of California. September, 16th, 1884.

FLORENCE W. HAYS, Plaintiff,

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

Present: Hon. M. A. Edmonds, judge.

In this action counsel for plaintiff having been heretofore allowed five days to file a brief herein, on the motion of defendants for an order setting aside, vacating, and annulling the order dated June 12th, 1884, for the publication of the summons in the above-entitled action and setting aside, vacating, and annulling the
33 order of the same date directing a copy of the summons and complaint in said action to be deposited in the post office directed to said defendants at their place of residence, and setting aside, vacating, annulling, and declaring void any and all proceedings had or taken under or pursuant to said orders or either of them, with leave to counsel for defendants to file a brief in reply thereto within five days thereafter, and said counsel for plaintiff having filed his said brief and it appearing that counsel for defendants do not desire to reply thereto, on the motion of Lloyd Baldwin, Esq., of counsel for said defendants, it is ordered that said motion be, and the same is hereby, submitted to the court for consideration and decision.

I hereby certify the foregoing to be a full, true, and correct copy of an order entered on the minutes of said superior
34 court, department No. 6, in the above-entitled cause.

Attest my hand and the seal of said superior court this 18th day of April, 1885.

JAS. J. FLYNN, *Clerk*,
[SEAL.] By D. J. GORDON, *Deputy Clerk*.

35 *Order Denying Motion.*

Department No. 6.

In the Superior Court, City and County of San Francisco, State of California. September 19th, 1884.

FLORENCE W. HAYS, Plaintiff,

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

Present: Hon. M. A. Edmonds, judge.

In this action the motions of defendants for an order setting aside, vacating, and annulling an order dated June 12th, 1884, for publication of the summons in this action and order of the same date directing a copy of the summons and complaint be deposited in the post office directed to defendants at their place of residence and vacating, setting aside, annulling, and declaring void any and
36 all proceedings had or taken under or pursuant to said orders or either of them having been heretofore submitted to the court for consideration and decision, now, after due deliberation, the court orders that the said motion be and the same is hereby denied.

I hereby certify the foregoing to be a full, true, and correct copy of an order entered on the minutes of said superior court, department No. 6, in the above-entitled cause.

Attest my hand and the seal of said superior court this 18th day of April, 1885.

JAS. J. FLYNN, *Clerk*,
By D. J. GORDON, *Deputy Clerk*.

37 *Bill of Exceptions.*

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants. } No. 12350.

Be it remembered that on the fifth day of June, 1884, the plaintiff herein made an affidavit, of which the following is a copy, except that the complaint which is set forth in said affidavit is herein referred to.

Department 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,

38 *vs.*

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Florence W. Hayes, being first duly sworn, deposes and says that she is the plaintiff in the above-entitled action; that heretofore, to wit, on the 7th day of May, 1884, she commenced an action in the above-named court against the defendants, Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, by filing a complaint in the clerk's office and the issuance of a summons thereon; that said complaint was duly verified and was in the following words and figures, to wit:

(Here follows the complaint in full.)

39 That all of said named defendants reside out of this State, the said Frank E. DeWolf and Isabella C. DeWolf being, as she is informed and believes, residents of the city of New York, in the State of New York, and the said Horace M. Barnes being a resident of the town of Bristol, State of Rhode Island.

That said defendants and each of them are proper and necessary parties to said action.

Wherefore deponent prays for an order that the service of the summons in the above-entitled action be made by publication of the same.

FLORENCE W. HAYS.

Subscribed and sworn to before me this 5th day of June, 1884.

[NOTARIAL SEAL.] C. S. MERRILL,
Notary Public.

That said affidavit was filed on the 14th day of June, 1884.

40 That on the 12th day of June, 1884, T. R. Wilson, one of the judges of the superior court of the city and county of San Francisco, signed an order of which the following is a copy:

Order for Publication of Summons.

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

In the above-entitled cause it appearing by the affidavit of the plaintiff, Florence W. Hays, that the defendants are non-residents of the State of California, and the above-entitled action has been
41 commenced in this court, and the summons issued, and it further appearing from said affidavit that a cause of action exists in favor of said plaintiff and against said defendants, and that they are proper and necessary parties to said action, and it further appearing therefrom that all of said defendants are absent from the State of California:

Upon motion of Ben. Morgan, Esq., counsel for plaintiff, it is ordered and adjudged that service of the summons in the above-entitled action be made upon the defendants by publication of the same in the Daily Evening Bulletin, a newspaper printed and published in the city and county of San Francisco, State of California, at least once a week for the period of two months.

It is further ordered and adjudged that said named newspaper is the one most likely to give notice of the pendency of said
42 action to the defendants, and is hereby designated as the one in which said publication shall be made.

It is further ordered and adjudged that a copy of the summons and complaint in said above-entitled action be forthwith deposited in the post office directed to the said Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, defendants, at their place of residence, viz: Frank E. De Wolf and Isabella C. De Wolf in the city of New York, State of New York, and Horace M. Barnes in the town of Bristol, State of Rhode Island.

Dated June 12th, 1884.

T. H. WILSON, *Judge.*

That said order was filed on the 14th day of June, 1884.

That afterwards, to wit, on the 21st day of August, 1884, the defendants in the above-entitled action gave and on the next day filed notice of writing of a motion to set aside the order on file for
43 publication of summons herein, of which notice the following is a copy:

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, a Citizen of the State of California, Plaintiff,

vs.

FRANK E. DE WOLF and ISABELLA C. DE WOLF, Citizens of the State of New York, and Horace M. Barnes, a Citizen of the State of Rhode Island, Defendants.

Please take notice that on Friday, the twenty-ninth day of August, 1884, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, we shall move said court, at the court-
44 room of said department No. 6, in the new city hall, in said city and county of San Francisco, for an order as follows:

I. Setting aside, vacating, and annulling the order dated June 12th, 1884, for publication of the summons in the above-entitled cause.

II. Setting aside, vacating, and annulling the order of said date directing a copy of the summons and complaint in said action to be deposited in the post office directed to said defendants at their place of residence.

III. Setting aside, vacating, annulling, and declaring void any and all proceedings had or taken under or pursuant to said orders or either of them.

Said motion will be made upon the following grounds, viz:

1st. That the affidavit of plaintiff on file upon which said order was based does not allege or show that said plaintiff has a
45 good cause or any cause of action against said defendants or either of them.

2d. That it does not appear by said affidavit or by the complaint that summons can be served by publication.

3rd. That it affirmatively appears by said affidavit and by the complaint that summons cannot be served by publication in this action.

4th. That it appears by said affidavit and by the complaint that the said suit is an action *in personam*, to hear and determine which this court cannot acquire jurisdiction by publication of summons or otherwise than by personal service of summons within this State or by their voluntarily appearing in said action.

5th. That said order appears to have been made a long time, to wit, seven days after the affidavit was verified.

6th. That the affidavit for publication of summons is indefinite and uncertain as to the residence of defendants, nor does it
46 sufficiently appear therefrom that defendants are absent from the State of California.

7th. That there is no evidence that defendants were absent from the State of California at the time when said order for publication of summons was made.

8th. That said order directs but one copy of summons and complaint to be deposited in the post office, while it appears that there are three absent defendants.

9th. That said order directs but one copy of summons and complaint to be directed to said Frank E. De Wolf and Isabella C. De Wolf in the city of New York, State of New York.

10th. That said order does not direct said copy of summons and complaint to be enclosed in an envelope, nor does it direct the postage thereon to be paid.

Said motion will be made upon the affidavit of plaintiff on file herein, dated June 5th, 1884, and upon the said order directing
47 publication of summons the complaint on file herein, and also upon the records of said court and the papers on file in said action.

Take notice further that we appear herein specially for the purposes of this motion, and that we do not appear for any other cause or purpose whatever; nor do we enter the appearance of the said defendants generally, nor do we intend to appear for said defendants further or other than as above stated.

LLOYD BALDWIN,
LOUIS T. HAGGIN,
Attorneys for Defendants.

To Ben. Morgan, Esq., attorney for plaintiff.

Endorsed: Service of the within notice is hereby acknowledged this 21st day of August, 1884.

BEN. MORGAN,
Att'y for Pl'ff.

That afterwards, and on the day in that behalf appointed,
48 to wit, on August 29, 1884, the said motion came on regularly for argument upon the law and motion calendar of this department of the superior court, whereupon Mr. Lloyd Baldwin, as the attorney for the defendants, read the said documents and notice of motion and moved the court for an order in pursuance thereof, and Mr. Ben. Morgan appeared on behalf of plaintiff and approved said motion.

After argument by the respective counsel the said matter was submitted to the court for consideration and decision; and afterwards, on the 19th day of September, A. D. 1884, the court rendered its decision therein and denied said motion. To this ruling and decision defendant's attorney then and there duly excepted and hereby designates the same as an error.

And because the matters aforesaid do not appear fully upon the record, therefore I, the undersigned, the judge before whom
49 the proceedings aforesaid were had and who made said ruling and decision, have, within the time allowed by law in that behalf, settled and signed this bill of exceptions according to the statute in such case made and provided, this 26th day of September, A. D. 1884.

M. A. EDMONDS, *Judge.*

Endorsed: I have examined the within and find it correctly sets forth the documents used on the motion, together with the proceedings had thereon. Ben Morgan, att'y for pl'ff.

Endorsed: Filed Sept. 26, 1884. William T. Sesnon, clerk, by Wm. J. Rightmire, deputy clerk.

50 *Summons.*

Department No. —.

In the Superior Court, City and County of San Francisco, State of California.

FLORENCE W. HAYES, a Citizen of the State of California, Plaintiff,

vs.

FRANK E. DE WOLF *et al.*, Defendants.

Action brought in the superior court, city and county of San Francisco, State of California, in and for the city and county of San Francisco, and the complaint filed in said city and county of San Francisco, in the office of the clerk of said superior court.

The people of the State of California send greeting to Frank E. De Wolf and Isabella C. De Wolf, citizens of the State of New York, and Horace M. Barnes, a citizen of the State of Rhode Island, defendants:

You are hereby requested to appear in an action brought against you by the above-named plaintiff in the superior court, city and county of San Francisco, State of California, and to answer
51 the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or if served elsewhere within thirty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to obtain a judgment and decree of this court requiring an accounting between plaintiff and the defendants, Frank E. De Wolf and Isabella C. De Wolf, as to the matters specified in the complaint on file herein; that upon payment by plaintiff or tendering the amount found due to them upon such accounting they be deemed to convey to plaintiff by good and sufficient deed an undivided one-half interest in the lands described in the complaint, and being situated in Fresno county, California, and described as sections 24, 28, 30, 34, 36, and the south half of section 20,
52 all in township 14 south, range 21 east, Mount Diablo base and meridian, and also section 6, in township 15 south, range 21 east, Mount Diablo base and meridian; also that the deed made by Frank E. and Isabella C. De Wolf, of date of March 5th, 1884, to Horace M. Barnes, as to plaintiff, be declared fraudulent and null and void; also for general relief and costs of suit. Reference to the complaint on file herein is hereby made for greater certainty.

And you are hereby notified that if you fail to appear and answer the said complaint as above required the said plaintiff will apply to the court for the relief demanded therein.

Given under my hand and seal of the said superior court, at the city and county of San Francisco, State of California, this seventh day of May, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] WILLIAM T. SESNON, *Clerk*,
By J. D. RUGGLES, *Deputy Clerk*.

Endorsed: Filed Oct. 21st, 1884. William T. Sesnon, clerk, by William J. Rightmire, deputy clerk.

53 *Affidavit of Publication of Summons.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss*:

SAN FRANCISCO, *August 20th*, 1884.

G. P. Rixford, of the said city and county, being duly sworn, affirms and says that he is a white male citizen of the United States; that he is over twenty-one years of age and is competent to bear witness on the hearing of the matters mentioned in the annexed summons; that he has no interest whatever in the matters mentioned therein, and that he is the principal clerk of the printers and publishers of the Daily Evening Bulletin, a newspaper which is published daily (Sundays and holidays excepted) in said city and county, and has charge of all the advertisements in said newspaper, and that the summons in the case of Florance W. Hayes, a citizen of the State of California, plaintiff, *vs.* Frank E. DeWolf *et al.*, defendants,
54 of which summons the following is a printed copy:

"Department No. —.

In the Superior Court, City and County of San Francisco, State of California.

FLORENCE W. HAYES, a Citizen of the State of California, Plaintiff,

vs.

FRANK E. DE WOLF *et al.*, Defendants.

Action brought in the superior court, city and county of San Francisco, State of California, in and for the city and county of San Francisco, and the complaint filed in said city and county of San Francisco, in the office of the clerk of said superior court.

The people of the State of California send greeting to Frank E. De Wolf and Isabella C. De Wolf, citizens of the State of New York, and Horace M. Barnes, a citizen of the State of Rhode Island, defendants:

55 You are hereby required to appear in an action brought against you by the above-named plaintiff in the superior

court, city and county of San Francisco, State of California, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; or, if served elsewhere, within thirty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to obtain a judgment and decree of this court requiring an accounting between plaintiff and the defendants, Frank E. De Wolf and Isabella C. De Wolf, as to the matters specified in the complaint on file herein; that upon payment by plaintiff, or tendering the amount found due to them upon such accounting, they be decreed to convey to plaintiff, by good and sufficient
56 deed, an undivided one-half interest in the lands described in the complaint, and being situated in Fresno county, California, and described as sections 24, 28, 30, 34, 36, and the south half of section 20, all in township 14 south, range 21 east, Mount Diablo base and meridian, and also section 6, in township 15 south, range 21 east, Mount Diablo base and meridian; also that the deed made by Frank E. and Isabella C. De Wolf, of date of March 5th, 1884, to Horace M. Barnes, as to plaintiff, be declared fraudulent and null and void; also for general relief and costs of suit. Reference to the complaint on file herein is hereby made for greater certainty.

And you are hereby notified that if you fail to appear and answer the said complaint as above required the said plaintiff will apply to the court for the relief demanded therein.

Given under my hand and seal of the said superior court,
57 at the city and county of San Francisco, State of California, this 7th day of May, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] WILLIAM T. SESNON, *Clerk*,
By J. D. RUGGLES, *Deputy Clerk*.

Ju. 14, 10 x S.

has been published every Saturday for two successive months, viz., June 14, 21, 28, July 5, 12, 17, 26, Aug. 2, 9, 16, 1884, in the above-named newspaper, commencing (first insertion) Saturday, June 14th, 1884, and ending (last insertion) Saturday, August 16th, 1884 (both days inclusive); and further sayeth not.

G. P. RIXFORD.

Subscribed and sworn to this 20th day of August, 1884, before me.
[NOTARIAL SEAL.] SAM'L S. MURFEY,
Notary Public.

Endorsed: Filed Oct. 11, 1884. William T. Sesnon, clerk, by Wm. J. Rightmire, deputy clerk.

58 *Affidavit of Ben. Morgan.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

In the Superior Court, City and County of San Francisco, State of California.

FLORENCE W. HAYS *vs.* FRANK E. DE WOLF *et al.*

Ben. Morgan, being duly sworn, says that he is and was on the 13 day of June, 1884, over the age of eighteen years; that he is not a party to this action; that on said 13th day of June, 1884, he enclosed in a separate envelope one copy of the complaint and summons herein and directed the same as follows: Isabella C. De Wolf, New York city, N. Y.; Frank E. De Wolf, New York
59 city, N. Y., and Horace M. Barnes, Bristol, Rhode Island, and placed upon each of said envelopes United States postage stamps sufficient in number and amount to ensure the transmission of the same through the mail to their respective destinations; that upon said date he deposited each of said envelopes so stamped and directed and enclosing said complaint and summons in the United States mail, at the city of San Francisco, State of California; that the same was in accordance with the order of publication herein made, which is hereby referred to and made a part of this affidavit.

BEN. MORGAN.

Subscribed and sworn to before me this 20th day of Oct., 1884.
[NOTARIAL SEAL.] LEWIS B. HARRIS,
Notary Public.

Endorsed: Filed Oct. 21, 1884. William T. Sesnon, clerk, by Wm. J. Rightmire, deputy clerk.

60 *Notice of Motion to Set Aside Service of Summons.*

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, a Citizen of the State of California, Plaintiff,

vs.

FRANK E. DE WOLF and ISABELLA C. DE WOLF, Citizens of the State, and Horace M. Barnes, a Citizen of the State of Rhode Island, Defendants.

Please take notice that on Friday, the fourteenth (14th) day of November, 1884, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, we shall move said court, at

the court-room of said department No. 6, in the new city hall, in said city and county of San Francisco, for an order as follows:

61 I. Setting aside the service of summons herein and vacating, quashing, and annulling the service thereof.

II. Quashing and dismissing said summons.

Said motion will be made upon the following grounds, viz:

1st. That there is no evidence in said return of service that said summons has ever been served upon the defendants or either of them in the manner required by law.

2d. That there is no evidence in the record showing that the summons has ever been served upon the defendants or either of them.

3rd. That the return of service shows the publication to have been defective, in that the name of plaintiff's attorney was not published.

4th. That the affidavit purporting to show publication of said summons does not show that the person making the same

62 was competent in that behalf.

5th. That the affidavit of plaintiff on file, upon which said order of publication was based, does not allege or show that said plaintiff has a good cause or any cause of action against said defendants or either of them.

6th. That it does not appear by said affidavit or by the complaint that summons can be served by publication.

7th. That it affirmatively appears by said affidavit and by the complaint that summons cannot be served by publication in this action.

8th. That it appears by said affidavit and by the complaint that the said suit is an action *in personam*, to hear and determine which this court cannot acquire jurisdiction by publication of summons or otherwise than by personal service of summons within this State or by the voluntary appearance of defendants in said action.

9th. That said order appears to have been made a long

63 time, to wit, seven days, after the affidavit was verified.

10th. That the affidavit for publication of summons is indefinite and uncertain as to the residence of defendants, nor does it sufficiently appear therefrom that defendants are absent from the State of California.

11th. That there is no evidence that defendants were absent from the State of California at the time when said order for publication of summons was made.

Said motion will be made upon the affidavit of plaintiff, on file herein, verified June 5th, 1884, and upon the said order directing publication of summons, the complaint on file herein, the summons, and the affidavit of publication and of deposit in the post-office, filed October 21st, 1884—that is to say, the return of service—and

64 also upon the records of said court and the papers on file in said action.

Take notice further that we appear herein specially for the purposes of this motion, and that we do not appear for any other cause or purpose whatever; nor do we enter the appearances of the said

defendants generally, nor do we intend hereby to appear for said defendants further or other than above stated.

LLOYD BALDWIN,
LOUIS T. HAGGIN,
Attorneys for Defendants.

To Ben. Morgan, Esq., attorney for plaintiff.

Endorsed: Service acknowledged this 8th day of November, 1884. Ben. Morgan, attorney for plaintiff. Filed Nov. 10, 1884. William T. Sesnon, clerk, by Wm. J. Rightmire, deputy clerk.

65 *Order Denying Motion to Set Aside Service of Summons.*

Department No. 6.

In the Superior Court, City and County of San Francisco, State of California. November 14, 1884.

Present: Hon. M. A. Edmonds, judge.

FLORENCE W. HAYS, Plaintiff,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF and HORACE M. BARNES Defendants.

In this action the motion of defendants herein for an order of this court setting aside the service of the summons herein, vacating, quashing, and annulling the service thereof, and quashing and dismissing said summons, coming on this day regularly to be heard, no
66 one appeared in support thereof, Ben. Morgan, Esq., appearing in opposition thereto and having been heard, the court orders that said motion be, and the same is hereby, denied.

I hereby certify the foregoing to be a full, true, and correct copy of an order entered on the minutes of said superior court, department No. 6, in the above-entitled cause.

Attest my hand and the seal of said superior court this 18th day of April, 1885.

[SEAL.]

JNO. J. FLYNN, *Clerk.*
By D. J. GORDON, *Deputy Clerk.*

67 *Settled Bill of Exceptions.*

Dep't No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants. } No. 12350.

Be it remembered that on the fifth day of June, 1884, the plaintiff herein made an affidavit, of which the following is a copy, ex-

cept that the complaint which is set forth in said affidavit is herein referred to:

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants. } No. 12350.

68 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Florence W. Hays, being first duly sworn, deposes and says that she is the plaintiff in the above-entitled action; that heretofore, to wit, on the 7th day of May, 1884, she commenced an action in the above-named court against the defendants, Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, by filing a complaint in the clerk's office and the issuance of a summons thereon.

That said complaint was duly verified and was in the following words and figures, to wit:

(Here follows the complaint in full.)

That all of said named defendants reside out of this State, the said Frank E. De Wolf and Isabella De Wolf being, as she is informed and believes, residents of the city of New York, in the
69 State of New York, and the said Horace M. Barnes being a resident of the town of Bristol, State of Rhode Island.

That said defendants and each of them are proper and necessary parties to said action.

Wherefore deponent prays for an order that the service of a summons in the above-entitled action be made by publication of the same.

FLORENCE W. HAYS.

Subscribed and sworn to before me this 5th day of June, 1884.
[NOTARIAL SEAL.] C. S. MERRILL,
Notary Public.

That said affidavit was filed on the 14th day of June, 1884.

That on the 12th day of June, 1884, T. R. Wilson, one of the judges of the superior court of the city and county of San Francisco, signed an order, of which the following is a copy:

Order for Publication of Summons.

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

70 FLORENCE W. HAYS, Plaintiff,

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

In the above-entitled cause, it appearing by the affidavit of the plaintiff, Florence W. Hays, that the defendants are now residents of the State of California, and that the above-entitled action has been commenced in this court and the summons issued; and it further appearing from said affidavit that a cause of action exists in favor of said plaintiff and against said defendants, and that they are proper and necessary parties to said action; and it further appearing therefrom that all of said defendants are absent from the State of California, upon motion of Ben. Morgan, Esq., counsel for plaintiff, it is ordered and adjudged that service of the summons
71 in the above-entitled action be made upon the defendants by publication of the same in the Daily Evening Bulletin, a newspaper printed and published in the city and county of San Francisco, State of California, at least once a week for the period of two months.

It is further ordered and adjudged that said named newspaper is the one most likely to give notice of the pendency of said action to the defendants and is hereby designated as the one in which said publication shall be made.

It is further ordered and adjudged that a copy of the summons and complaint in said above-entitled action be forthwith deposited in the post office directed to the said Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, defendants, at their place of resi-
72 dence, viz: Frank E. De Wolf and Isabella C. De Wolf in the city of New York, State of New York, and Horace M. Barnes in the town of Bristol, State of Rhode Island.

Dated June 12, 1884.

T. R. WILSON, *Judge.*

That said order was filed on the 14th day of June, 1884

That afterwards, on the 21st day of October, 1884, the plaintiff caused to be filed in said action the summons and two affidavits purporting to show a service thereof by publication and deposit of copies of summons and complaint in the post office, and which constituted the only return of service in that behalf, copies of which affidavits are as follows:

First.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

SAN FRANCISCO, *August 20th*, 1884.

G. P. Rixford, of the said city and county, being duly sworn, affirms and says that he is a white male citizen of the United States; that he is over twenty-one years of age and is competent to
73 be a witness on the hearing of the matters mentioned in the annexed summons; that he has no interest whatsoever in the matters mentioned therein, and heis the principal clerk of the printers and publishers of the Daily Evening Bulletin, a newspaper which is published daily (Sundays and holidays excepted) in said city and county, and has charge of all of the advertisements in said newspaper, and that the summons in the case of Florence W. Hays, a citizen of the State of California, plaintiff, *vs.* Frank E. De Wolf *et al.*, defendants, of which summons the following is a printed copy:

(Here follows printed copy of summons.)

Has been published every Saturday for two successive months, viz., June 14, 21, 28; July 5, 12, 19, 26; Aug. 2, 9, 16, 1884, in the above-named newspaper, commencing (first insertion) Saturday, June 14th, 1884, and ending (last insertion) Saturday, August 16th, 1884 (both days inclusive).

And further sayeth not.

G. P. RIXFORD.

74 Subscribed and sworn to this 20th day of August, 1884, before me.

[NOTARIAL SEAL.] SAM'L S. MURFEY,
Notary Public.

The name of plaintiff's attorney was not published in said newspaper as a part of said summons or otherwise.

Second.

In the Superior Court, City and County of San Francisco, State of California.

FLORENCE W. HAYS *vs.* FRANK E. DE WOLF *et al.*

STATE OF CALIFORNIA. }
City and County of San Francisco, } ss:

Ben. Morgan, being duly sworn, says that he is and was on
75 the 13th day of June, 1884, over the age of eighteen years; that he is not a party to this action; that on said 13th day of June, 1884, he inclosed in a separate envelope one copy of the complaint and summons herein and directed the same as follows: Isa-

bella C. De Wolf, New York city, N. Y.; Frank E. De Wolf, New York city, N. Y., and Horace M. Barnes, Bristol, Rhode Island, and placed upon each of said envelopes United States postage stamps sufficient in number and amount to ensure the transmission of the same through the mail to their respective destination-.

That upon said date he deposited each of said envelopes so stamped and directed and enclosing said complaint and summons in the United States mail at the city of San Francisco, State of California; that the same was in accordance with the order of publication herein made, which is hereby referred to and made a part of this affidavit.

BEN. MORGAN.

76 Subscribed & sworn to before me this 20th day of Oct., 1884.

[NOTARIAL SEAL.] LEWIS B. HARRIS,
Notary Public.

That said affidavits were filed on the 21st day of October, 1884.

That afterwards, to wit, on the eighth day of November, 1884, the defendants gave and on the 10th day of November, 1884, filed notice, in writing, of a motion to set aside the service of summons herein; of which notice the following is a copy, to wit:

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants. } No. 12350.

77 Please take notice that on Friday, the fourteenth (14th) day of November, 1884, as ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, we shall move said court, at the court-room of said department No. 6, in the new city hall, in said city and county of San Francisco, for an order as follows:

I. Setting aside the service of summons herein, and vacating, quashing, and annulling the service thereof.

II. Quashing and dismissing said summons.

Said motion will be made upon the following grounds, viz:

1st. That there is no evidence in said return of service; that said summons has -ever been served upon the defendants or either of them in the manner required by law.

2d. That there is no evidence in the record showing that the summons has ever been served upon the defendants or either of them.

78 3d. That the return of service shows the publication to have been defective in that the name of plaintiff's attorney was not published.

4th. That the affidavit purporting to show publication of said summons does not show that the person making the same was competent in that behalf.

5th. That the affidavit of plaintiff on file upon which said order of publication was based does not allege or show that said plaintiff has a good cause or any cause of action against said defendants or either of them.

6th. That it does not appear by said affidavit or by the complaint that summons can be served by publication.

7th. That it affirmatively appears by said affidavit and by the complaint that summons cannot be served by publication in this action.

8th. That it appears by said affidavit and by the complaint that the said suit is an action *in personam*, to hear and determine
79 which this court cannot acquire jurisdiction by publication of summons or otherwise than by personal service of summons within this State or by the voluntary appearance of defendants in said action.

9th. That said order appears to have been made a long time, to wit, seven days, after the affidavit was verified.

10th. That the affidavit for publication of summons is indefinite and uncertain as to the residence of defendants, nor does it sufficiently appear therefrom that defendants are absent from the State of California.

11th. That there is no evidence that defendants were absent from the State of California at the time when said order for publication of summons was made.

Said motion will be made upon the affidavit of plaintiff, on file herein, verified June 5th, 1884, and upon the said order directing publication of summons, the complaint on file herein, the
80 summons, and the affidavit of publication and of deposit in the post office, filed October 21st, 1884—that is to say, the return of service, and also upon the records of said court, and the papers on file in said action.

Take notice, further, that we appear herein specially for the purpose of this motion, and that we do not appear for any other cause or purpose whatever, nor do we enter the appearance of the said defendants generally, nor do we intend hereby to appear for said defendants further or other than as above stated.

LLOYD BALDWIN,
LEWIS T. HAGGIN,
Attorneys for Defendants.

To Ben. Morgan, Esq., attorney for plaintiff.

Endorsed: Received a copy of within notice this 8th day of November, 1884. Ben. Morgan, attorney for plaintiff.

That said notice was filed on the 10th day of November, 1884.

81 That afterwards, and on the day in that behalf appointed, to wit, on the 14th day of November, 1884, the said motion

came on regularly for argument upon the law and motion calendar of this department of the superior court: whereupon defendants' attorneys moved the court upon the documents and notice aforesaid for an order in pursuance of said notice of motion, and Mr. Ben. Morgan appeared as attorney on behalf of plaintiff and opposed said motion.

After argument the said matter was submitted to the court for consideration and decision; and thereupon, to wit, on the day last aforesaid, the court rendered its decision thereon, and denied said motion; to this ruling and decision defendants' attorneys then and there duly excepted, and hereby designate the same as an error.

And because the matters aforesaid do not appear fully upon the record, therefore I, the undersigned, the judge before whom
82 the proceedings aforesaid were had and who made said ruling and decision, have, within the time allowed by law in that behalf, settled and signed this bill of exceptions, according to the statute in such case made and provided, this 21st day of November, A. D. 1884.

M. A. EDMONDS, *Judge.*

I have examined within and find that I have no objections to find to the same.

BEN. MORGAN,
Att'y for Pl'ff.

Endorsed: Filed Nov. 21, 1884. William T. Sesnon, clerk, by Wm. J. Rightmire, deputy clerk.

83 *Answer of Frank E. De Wolf and Isabella C. De Wolf.*

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants. } No. 12350.

Now come the defendants, Frank E. De Wolf and Isabella C. De Wolf, and not waiving, but expressly reserving, all objections to the jurisdiction of the above-named court of the persons of these defendants and of the persons of each of them and of the subject-matter of said action, for answer to plaintiff's complaint herein allege as follows:

I.

As to the allegations of article V of said complaint they
84 deny that subsequent to the making of said note and mortgage or after said note became due they, the said Frank E. De Wolf

and Isabella C. De Wolf, transferred or assigned, without consideration, said note and mortgage or either of them to J. B. Haggin, or that he, the said Haggin, at the request or for the use or benefit of said Frank E. and Isabella C. De Wolf or either of them, commenced an action to forelose the same, but they admit that in fact the said Haggin acquired the title to said note and mortgage, and that he commenced suit to foreclose the same; and they allege that he, the said Haggin, acquired title to said note and mortgage before the maturity thereof.

As to article VI of said complaint they deny that in all or in any of the said transactions or in the taking of said deed said Haggin acted as the agent of said Frank E. and Isabella C. De Wolf or either of them.

As to article VII of said complaint they deny that said J. B.
85 Haggin, at the request of said Frank E. and Isabella C. De Wolf or either of them, was their agent, or without consideration conveyed said described lands to Joseph D. W. Dimmick, either by deed dated February 1st, 1877, or otherwise; and upon their information and belief they deny that said Dimmick received the same or any part thereof as agent or in trust for the said Frank E. De Wolf and Isabella C. De Wolf or either of them.

As to article VIII of said complaint these defendants, upon their information and belief, deny that on or about the twelfth day of February, 1877, or at any other time, the said Joseph De W. Dimmick conveyed without consideration the said described lands or any part thereof to said Isabella C. De Wolf, except that these defendants admit that said Dimmick did, on or about said last-mentioned date, convey an undivided part of said lands to said
86 Isabella C. De Wolf, but deny that said conveyance was without consideration.

As to article IX of said complaint these defendants, upon their information and belief, deny that on or about the fifth day of March, 1884, they without consideration conveyed by deed said lands, except section 30, to Horace M. Barnes. They admit that at about the date above mentioned they conveyed an undivided interest in said lands to said Barnes, and refer to the records of Fresno county, where said deed is recorded, for a description of the interest conveyed, but are themselves now unable to recollect.

As to article X of said complaint they deny that said Horace M. Barnes took said deed, to wit, the deed mentioned and described in article IX thereof, for the purpose of covering up or concealing their title, to wit, the title of said grantors, to the same, or for
87 the purpose or with the intent to cheat or defraud complainant, or for any other wrongful or fraudulent purpose whatever.

As to article XI of said complaint these defendants deny that plaintiff executed or delivered said deed to J. B. Haggin, as the agent of said Frank E. and Isabella C. De Wolf or either of them, or at the urgent solicitation of her husband, John J. Hays, or that said John J. Hays was at the time unable to attend to business, or that he importuned plaintiff to make said deed; deny that com-

plainant, yielding to the entreaties or persuasions of the said John J. Hays or in consequence of his entreaties or persuasions, did make said deed or did consent to make the same because of or by reason of his entreaties or persuasions; on the contrary, they allege, upon their information and belief, that said deed was executed by plaintiff freely and voluntarily and was acknowledged by her upon
88 an examination apart from and without the hearing of her husband, and that the same was her free and voluntary act and deed.

As to article XII of said complaint these defendants deny that they well knew or that they ever knew at all, either at the time of the execution of said deed to J. B. Haggin or at any other time, that the same was made by complainant under the influence of her said husband or because of his persuasion or solicitation, or that the same was not her free and voluntary act.

As to article XIV of said complaint these defendants deny that since the conveyance by plaintiff to J. B. Haggin of said described lands the defendants, Frank E. and Isabella C. De Wolf, or either of them, have been in possession of said lands, receiving or enjoying the rents or profits, except that these defendants admit that
89 from about February 12th, 1877, till about March 5th, 1884, they were in possession of nine undivided tenths of said lands. These defendants deny that they have ever during the period last aforesaid received any rents or profits whatever from said lands over and above the amount necessary to pay the taxes and necessary expenses of keeping possession thereof and of protecting the same.

As to article XV of said complaint these defendants deny that the amount of rents and profits or the amount of rents or profits so received or received at all from said lands amounts to a large sum of money, or that the same amounts to any sum of money whatever; deny that said lands have ever during the period aforesaid produced or yielded any rents or profits or any income whatever.

As to article XVI of said complaint these defendants deny
90 that plaintiff is still indebted to them or to either of them the amount of said note or interest, either less the amount of rents and profits of said land or otherwise.

As to article XVII of said complaint these defendants deny that the value of the interest in said lands, which is described in the complaint and which is the same as the interest sought to be recovered in this action, is $100,000, and upon their information and belief they deny that the value of said interest exceeds —.

II.

And for a further and separate answer and defense to the complaint of said plaintiff these defendants say that the plaintiff's alleged cause of action is barred by the provisions of section 318 of the code of civil procedure of the State — California.

III.

And for a further and separate answer and defense to the
91 complaint of said plaintiff these defendants say that the plain-

tiff's alleged cause of action is barred by the provisions of section 319 of the code of civil procedure of the State of California.

IV.

And for a further and separate answer and defense to the complaint of said plaintiff these defendants say that the plaintiff's alleged cause of action is barred by the provisions of section 338, subdivision 4, of the code of civil procedure of the State of California.

Wherefore these defendants pray judgment that they may be hence dismissed without day, and for their costs.

LLOYD BALDWIN,
LOUIS T. HAGGIN,
E. F. SWORTFIGNER,
Attorneys for said Defendants.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

E. F. Swortfigner, being duly sworn, says that he is one of
92 the attorneys for the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

Affiant further says that the reason why this answer is not verified by the said defendants is because they, the said defendants, are absent from the city and county where affiant resides; that affiant resides in the city and county of San Francisco, State of California, and that both of said defendants are now residing in the city of Nice, in the Republic of France.

E. F. SWORTFIGNER.

Subscribed and sworn to before me this 24th day of January, 1885.

[NOTARIAL SEAL.] SAM'L S. MURFEY,
Notary Public.

93 Endorsed: Service of the within answer is hereby acknowledged this twenty-fourth day of January, A. D. 1885. Ben. Morgan, attorney for plaintiff. Filed Jan. 28, 1885. Jas. J. Flynn, clerk, by J. J. Farrell, deputy clerk.

94 *Answer of Horace M. Barnes.*

Dep't No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants. } No. 12350.

Now comes the defendant, Horace M. Barnes, and not waiving, but expressly reserving, all objections to the jurisdiction of the above-named court of the person of this defendant and of the subject-matter of said action, for answer to plaintiff's complaint herein alleges as follows:

I.

As to the allegation in said complaint, in article II thereof contained, that on the 12th day of December, A. D. 1872, she was the owner by purchase with her own separate funds of the undivided
95 one-half of those certain lands therein described, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof.

As to the allegation in said complaint, in article IV thereof contained, that she purchased said described lands from Frank E. De Wolf and Isabella C. De Wolf and in part payment of the same gave her promissory note, secured by a mortgage upon said land, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said obligation and every part thereof.

As to the allegation in said complaint, in article V thereof contained, that subsequent to the making of said note and mort-
96 gage and after said note become due said Frank E. De Wolf and Isabella C. De Wolf transferred and assigned without consideration said note and mortgage to J. B. Haggin, who thereafter, at the request and for the use and benefit of said Frank E. and Isabella C. De Wolf, commenced an action to foreclose the same, this defendent has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof, except that this defendent admits that on or about the 16th day of January, 1877, said complainant and John J. Hays, her husband, executed and delivered to J. B. Haggin a deed for the land described in article III of said complaint.

As to the allegation in said complaint, in article VI thereof contained, that in all of said transactions, and particularly in the taking

of said deed, said Haggin acted as the agent of said Frank E.
97 and Isabella C. De Wolf, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof.

As to the allegation in said complaint, in article VII thereof contained, that thereafter the said J. B. Haggin, at the request of said Frank E. and Isabella C. De Wolf and their agent, without consideration, conveyed by deed dated February 1st, 1877, said described lands to Joseph De W. Dimmick, who received the same as agent and in trust for said Frank E. and Isabella C. De Wolf, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies the said allegation and every part thereof.

As to the allegation in said complaint, in article VIII thereof
98 contained, that thereafter, on or about the 12th day of February, 1877, said Joseph De W. Dimmick conveyed, without consideration and at her request and that of Frank E. De Wolf, said described lands to defendant, Isabella C. De Wolf, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof.

As to the allegation in said complaint, in article IX thereof contained, that on or about the 5th day of March, A. D. 1884, said Frank E. and Isabella C. De Wolf without consideration conveyed by deed said lands, except section 30, to Horace M. Barnes, of Bristol, Rhode Island, this defendant, upon information and belief, denies said allegation and every part thereof, except that he admits that on or about the 5th day of March,
1884, said Frank E. and Isabella C. De Wolf without con-
99 sideration conveyed by deed an undivided part of said land, except section 30, to said Horace M. Barnes, and he refers to the records of Fresno county, where said deed is recorded, for a description of the interest so conveyed, but is himself unable now to recollect.

As to the allegation in said complaint, in article X thereof contained, this defendant denies that said Horace M. Barnes took said deed, to wit, the deed mentioned and described in article IX thereof, for the purpose of covering up or concealing the title of said Frank E. and Isabella C. De Wolf or either of them the better to cheat or defraud complainant or for the purpose of cheating or defrauding complainant, or for any fraudulent or wrongful purpurpose whatever.

As to the allegation in said complaint, in article XI thereof contained, that plaintiff executed and delivered said deed to J. B.
100 Haggin, as the agent of said Frank E. and Isabella C. De Wolf, at the urgent solicitation of her husband, John J. Hays, who was at the time an invalid unable to attend to business, and who importuned plaintiff to make said deed, urging as a reason that he was unwilling to die and leave her involved in a litigation which

might result in her pecuniary ruin, and complainant, yielding to his entreaties and persuasions, consented to and did make said deed, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof.

Upon his information and belief, this defendant denies that said Frank E. and Isabella C. De Wolf, or either of them, well knew or knew at all at the time of the execution of said deed to J. B. Haggin, or at any other time, that the same was made by complain-
101 ant under the influence of her said husband, or because of his persuasion or solicitation, or that the same was not her free and voluntary act.

As to the allegation in said complaint, in article XIV thereof contained, that since the conveyance by plaintiff to J. B. Haggin of said described lands the defendants, Frank E. and Isabella C. De Wolf, have been in possession of said lands, receiving and enjoying the rents and profits, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof.

This defendant, upon his information and belief, denies that the amount of rents and profits received by said Frank E. and Isabella C. De Wolf, or either of them, amount to a large or any sum of money.

As to the allegation in said complaint, in article XVI thereof
102 contained, that plaintiff is still indebted to defendants, Frank E. and Isabella C. De Wolf, the amount of said note and interest herein alleged, less the amount of rents and profits of said land belonging to her and received by said defendants, Frank E. and Isabella C. De Wolf, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof.

As to the allegation in said complaint, in Article XVII thereof contained, that the value of the interest said lands sought to be recovered herein is of the value of $100,000, this defendant has no information or belief upon the subject sufficient to enable him to answer said allegation, and therefore, placing his denial upon that ground, he denies said allegation and every part thereof.

103 II.

And for a further and separate answer and defense to the complaint of said plaintiff this defendant says that the plaintiff's alleged cause of action is bound by the provisions of section 318 of the code of civil procedure of the State of California.

III.

And for a further and separate answer and defense to the complaint of said plaintiff this defendant says that the plaintiff's alleged cause of action is barred by the provisions of section 319 of the code of civil procedure of the State of California.

IV.

And for a further and separate answer and defense to the
104 complaint of said plaintiff this defendant says that the plaintiff's alleged cause of action is barred by the provisions of section 338, subdivision 4, of the code of civil procedure of the State of California.

Wherefore this defendant prays judgment that he may be hence dismissed without day and for his costs.

LLOYD BALDWIN,
LOUIS T. HAGGIN,
E. F. SWORTFIGUER,
Att'ys for Def't, Horace M. Barnes.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

E. F. Swortfiguer, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters
105 which are therein stated upon information or belief, and as to those matters that he believes it to be true.

Affiant further says that the reason why this answer is not verified by the said defendant is because he, the said defendant, is absent from the city and county where affiant resides; that affiant resides and has his office in the city and county of San Francisco, State of California, and that said defendant is now residing and ever since the commencement of this action has resided in the town of Bristol, State of Rhode Island.

E. F. SWORTFIGUER.

Subscribed and sworn to before me this 2d day of February, A. D. 1885.

[NOTARIAL SEAL.] SAM'L S. MURFEY,
Notary Public.

Endorsed: Service of the within answer is hereby acknowledged this 2d day of February, A. D. 1885. Ben. Morgan, attorney for plaintiff. Filed Feb'y 3, 1885. John J. Flynn, clerk, by J. J. Farrell, deputy clerk.

106 *Petition for Removal of Cause.*

Department No. 6.

In the Supreme Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,
versus
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants. } N-. 12350.

The petition of Florence W. Hays respectfully represents to this honorable court that your petitioner is plaintiff in the above-entitled action, and was at the time of the commencement thereof and still is a citizen of the State of California; that said Frank E. De Wolf and Isabella C. De Wolf, defendants herein, were and each of them was at the time of the commencement of said action, and still is, a citizen of the State of New York, and that said Horace
107 M. Barnes, the other defendant, was at the time of the commencement of said action, and still is, a citizen of the State of Rhode Island.

That the matter in dispute herein exceeds, exclusive of costs, the sum or value of five hundred dollars, and that there is a controversy in this suit which is wholly between citizens of different States, and which can be fully determined as between them.

And your petitioner further represents that this suit has not yet been tried, and that there has been no term of this honorable court at which this suit could have been tried, and that your petitioner desires to remove this suit before the trial thereof into the circuit court of the United States for the ninth circuit and district of California, on the first day of its next session, or before, in pursuance of the act of Congress providing for the removal of causes from State courts.

Your petitioner makes and files herewith a bond, with good
108 and sufficient surety, for his entering in the circuit court of the United States for the district of California, on the first day of the next session of said court, or before, a copy of the record in said suit, and for paying all costs that may be awarded by said circuit court if said circuit court shall hold that said suit was wrongfully or improperly removed thereto; and also for her appearing and entering special bail in such suit if special bail was originally requisite therein; and for her complying in all respects with the provisions in the premises of the act of Congress of the United States passed March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes."

Wherefore petitioner prays this honorable court that said suit be removed into the circuit court of the United States of the ninth cir-

cuit and district of California, and that this court proceed
109 no further in the premises.

Dated August 27th, A. D. 1884.

BEN. MORGAN,
Attorney for Petitioner, Plaintiff Herein.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Florence W. Hays, being duly sworn, deposes and says that she is the petitioner herein; that she has read the above and foregoing petition and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that she believes it to be true.

FLORENCE W. HAYS.

Subscribed and sworn to before me this 27th day of August, A. D. 1884.

[NOTARIAL SEAL.] LEWIS B. HARRIS,
Notary Public.

Endorsed: Service of a copy of the within petition is hereby admitted. Dated March 13th, 1885. Lloyd Baldwin, G. A. W.,
110 attorney for defts. Filed March 17, 1885. Jas. J. Flynn, clerk, by Chas. L. Asber, deputy clerk.

111 *Notice of Motion to Remove Cause.*

Dep't 6.

In the Superior Court of the State of California in and for the City and County of San Francisco.

FLORENCE W. HAYS, Plaintiff,

vs.

FRANK E. DE WOLF, Defendant.

Take notice that on Friday, the 20th day of March, 1885, at the court-room of the superior court, dep't 6, new city hall, in the city and county of San Francisco, at ten o'clock a. m., on said day or as soon thereafter as counsel can be heard, we will move said court for an order for the removal of the above-entitled cause to the United States circuit court, 9th circuit, district of California.

The grounds upon which said motion will be made are that the defendants are not citizens of the State of California, said
112 Frank E. De Wolf and Isabella C. De Wolf being citizens of the State of New York and the said Horace M. Barnes being a citizen of the State of Rhode Island.

The papers to be used on the hearing of this motion will be those on file, together with the petition and bond herewith filed and this notice.

BEN. MORGAN,
Att'y for Petitioner, Plaintiff.

To clerk of said court and Messrs. Lloyd Baldwin and Louis Haggin, att'ys for defts.

Endorsed: Service acknowledged this 13th day of March, 1885. Lloyd Baldwin, G. S. W., att'y for defts. Filed March 17, 1885. Jas. J. Flynn, clerk, by Chas. L. Ascher, deputy clerk.

113 *Order Removing Cause to U. S. Circuit Court.*

Department No. 6.

In the Superior Court, City and County of San Francisco, State of California.

MARCH 20TH, 1885.

Present: Hon. M. A. Edmonds, judge.

FLORENCE W. HAYS, Plaintiff,

v.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

This cause came on this day regularly for hearing upon plaintiff's motion that said cause be removed to the United States circuit court, ninth circuit, district of California; Ben. Morgan, Esq., appeared in support of said motion, and Lloyd Baldwin, Esq., in opposition thereto; and counsel having been heard, and it appearing that the defendants are not and were not at the time of the commence-
114 ment of said action citizens of the State of California, and that said circuit court is the proper place for the trial of said cause, it is ordered that said cause be, and the same is hereby, removed from the superior court of the city and county of San Francisco, State of California, to said United States circuit court, ninth circuit, district of California.

I hereby certify the foregoing to be a full, true, and correct copy of an order entered on the minutes of said superior court, department No. 6, in the above-entitled cause.

Attest my hand and the seal of said superior court this 18th day of April, 1885.

[SEAL.]

JAS. G. FLYNN, *Clerk*,
By D. J. GORDON,
Deputy Clerk.

115 *Bond on Removal.*

Department No. 6.

In the Superior Court of the City and County of San Francisco, State of California.

FLORENCE W. HAYS, Plaintiff,

versus

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

Know all men by these presents that we, Florence W. Hays, as principal, and Henry Wanton, of the city and county of San Francisco, State of California, and G. Howard Thompson, of the same place, as sureties, are jointly and severally held and firmly bound unto Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes in the sum of five hundred dollars ($500) lawful money of the United States of America; for which, well and truly to be paid unto the said Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes,
116 their and each of their heirs, executors, administrators, and assigns, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and assigns, firmly by these presents. Sealed with our seals and dated this 25th day of August, A. D. 1884.

The condition of this obligation is such that if the said Florence W. Hays, plaintiff in a certain suit entitled "Florence W. Hays *versus* Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes," now pending in the superior court of the State of California in and for the city and county of San Francisco, department number 6, shall enter in the circuit court of the United States for the ninth circuit and district of California, on the first day of the next session thereof, or before, a copy of the record in said suit, and shall pay all costs that may be awarded by said circuit court if said circuit court shall hold that said suit was wrongfully and improperly removed thereto, and shall then appear and enter special bail in said suit, if
117 special bail be requisite therein, and shall enter his appearance in said court, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof the said obligors have hereunto set their hands and seals the day and year above written, to wit, this 25th day of August, A. D. 1884.

HENRY WANTON. [SEAL.]
FLORENCE W. HAYS. [SEAL.]
G. HOWARD THOMPSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
LEWIS B. HARRIS.

Bond.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Henry Wanton and G. Howard Thompson, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself, says that he is a resident and freeholder within the State of California and is worth the amount specified in said undertaking as the penalty
118 thereof over and above all his just debts and liabilities, exclusive of property exempt from execution.

HENRY WANTON.
G. HOWARD THOMPSON.

Subscribed and sworn to before me this 25th day of August, A. D. 1884.

[NOTARIAL SEAL.] LEWIS B. HARRIS,
Notary Public.

Approved.

M. A. EDMONDS, *Judge.*

Clerk's Certificate.

I, Jas. J. Flynn, county clerk of the city and county of San Francisco, State of California, and *ex officio* clerk of the superior court of said city and county, do hereby certify the foregoing to be a full, true, and correct copy of the whole of the record in the within action of Florence W. Hays *vs.* Frank E. De Wolf *et als.*, now on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court this 18th day of April, 1885.
119 JAS. J. FLYNN,
County Clerk and ex Officio Clerk of the Superior Court.
By D. J. GORDON,
Deputy Clerk.

Endorsed: Service of a copy of the within undertaking is hereby admitted, March 13th, A. D. 1885. Lloyd Baldwin, G. A. W., att'y for def'ts. Filed Mar. 17, 1885. Jas. J. Flynn, clerk, by Chas. L. Asher, deputy clerk.

Endorsed: U. S. circuit court, dist. of Cal. Transferred record. Filed May 22d, 1885. L. S. B. Sawyer, clerk.

Replication.

120 In the Circuit Court of the United States for the District of California, Ninth Circuit.

FLORENCE W. HAYS, Complainant,

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

This repliant, saving and reserving to herself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of defendants and each of them, for replication thereunto saith that she will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto, and that said answers of the defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; that any other
121 matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed, or denied is true, all of which matters and things this repliant now is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by her said bill she has already prayed.

BEN. MORGAN,
Sol'r for Complainant.

Endorsed: Received copy of within replication this 14th day of July, 1885. Lloyd Baldwin, att'y for defendants. Filed July 14, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

122 *Enrollment.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

FLORENCE W. HAYS, Complainant,
vs.
FRANK E. DE WOLF & *al.*, Respondents. } No. 3695.

On the 22d day of May, 1885, a certified copy of the record herein, on transfer from the superior court of the State of California in and for the city and county of San Francisco, was filed in this court, which record is hereto annexed.

On the 14th day of July, 1885, a replication was filed herein, which is hereto annexed.

Thereafter a final decree was filed and entered herein in the words and figures following, to wit:

Decree.

In the United States Circuit Court, Ninth Circuit, District of California. February Term, 1886.

123 FLORENCE W. HAYS, Complainant,
vs.
FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Respondents. } No. 3695.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit: That the deed mentioned in the complaint of date March 5th, 1884, made by Frank E. De Wolf and Isabella C. De Wolf to Horace M. Barnes, be, and the same is hereby, declared null and void.

That Frank E. De Wolf and Isabella C. De Wolf make, execute, and deliver to complainant, Florence W. Hays, a good and sufficient deed conveying to her an undivided one-half interest in and to the following-described lands, viz:

124 All those certain lots, pieces, and parcels of land bounded and described as follows: Sections twenty-four, twenty-eight, thirty, thirty-four, thirty-six, and the south half of section twenty, all in township fourteen south, range twenty-one east, Mount Diablo base and meridian; also section six, in township fifteen south, range twenty-one east, Mount Diablo base and meridian; all of said lands being in the county of Fresno, State of California; that said conveyance be executed and delivered by said respondents, Frank E. De Wolf and Isabella C. De Wolf, to complainant within twenty days from the entry of this decree, and in the event of their failure, refusal, or neglect so to do that L. S. B. Sawyer, clerk of this court, make, execute, and deliver such deed in the name of and for and on behalf of said respondents, and the said L. S. B. Sawyer is hereby appointed commissioner for the purpose that complainant
125 have and recover from respondents her costs and disbursements herein, taxed at $211.10.

May 5th, 1886.

GEO. M. SABIN,
District Judge, Dist. of Nevada, Presiding.

Endorsed: Filed and entered May 5th, 1886. L. S. B. Sawyer, clerk.

126 *Memorandum of Costs and Disbursements.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

FLORENCE W. HAYS, Plaintiff,

vs.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Defendants.

Disbursements:

Marshal's fees	
Clerk's fees, State court, com'r, & transfer	$17 50
Witness' fees	
Publication of summons	40
Com'r's fees, taking testimony	144 60
Docket fee	
Clerk's fee, U. S. c't court	9 75
Aff.	25
Taxed at, total	$211 10

L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA, } ss:
District of California, City and County of San Francisco, }

127 Ben. Morgan, being duly sworn, deposes and says that he is the attorney for the plaintiff in the above-entitled cause and, as such, is better informed relative to the above costs and disbursements than the said plaintiff; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

BEN. MORGAN.

Subscribed and sworn to before me this 6th day of May, A. D. 1880.

L. S. B. SAWYER,
Commissioner of U. S. Circuit Court, &c.

To Lewis T. Haggin, Esq., sol'r for respondents:

You will please take notice that on Saturday, the 8th day of May, A. D. 1886, at the hour of 10½ o'clock a. m., I will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed, pursuant to the rule of said court in such case

128 made and provided.

BEN. MORGAN,
Sol'r for Complainant.

Endorsed: Service acknowledged this 6th day of May, 1886. Louis T. Haggin, sol'r for respondents. Filed this sixth day of May, A. D. 1886. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

129 *Clerk's Certificate.*

Whereupon said certified copy of record, replication, and final decree and memorandum of taxed costs are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, etc.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON,
Deputy Clerk.

Endorsed: Enrolled papers. Filed May 5th, 1886. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

130 U. S. Circuit Court, Dist. of Cal.

FLORENCE W. HAYS
vs.
FRANK E. DE WOLF *et al.* } No. 3695.

Depositions of Witnesses for Complainant.

Mrs. Hays,	2;	cross, 51.
Haggin,	26;	35.
Kirkpatrick	38;	44.
Norris,	62;	64.
Rearden,	66;	77.

For Respondents.

Perrin,	81;	cross, 84.
Miner,	21;	92.

131 *Caption to Depositions.*

In the Circuit Court of the United States for the Ninth Circuit and District of California.

FLORENCE W. HAYS
vs.
FRANK E. DE WOLF *et al.* } No. 3695.

Be it remembered that on the several days hereafter named, at my office, in the city and county of San Francisco, State of California, before me, S. C. Houghton, examiner in chancery of the circuit court of the United States for the ninth circuit and district of California, personally appeared the several witnesses whose names are hereafter set forth, on behalf of the respective parties to the above-entitled suit.

Benjamin Morgan, Esq., appeared as counsel on behalf of complainant; Lloyd Baldwin, Esq., as counsel on behalf of respondent-.

Following is a record of the proceedings:

132 *Stipulation that Testimony may be Taken Down in Shorthand, &c.*

MONDAY, *August 24th*, 1885.

Present: Mr. Morgan, of counsel for complainant; Mr. Baldwin, as counsel for respondent-.

It is stipulated and agreed by and between counsel for the respective parties herein that the testimony herein may be taken down in shorthand by M. E. O'Conner and by him transcribed, and that the said transcript may be received in evidence subject to no objections, except such as might be urged were the same taken by the examiner personally in longhand writing, and that a charge of ten dollars per day for attendance of said O'Conner as reporter shall constitute a portion of the costs to be taxed herein.

Deposition of Florence W. Hays.

Examination-in-chief of FLORENCE W. HAYS, a witness called on behalf of complainant, sworn.

By Mr. MORGAN:

Q. 1. What is your name?

133 A. Florence W. Hays.

Q. 2. You are the complainant in this suit, are you?

A. Yes, sir.

Q. 3. Do you know the defendant, Frank E. De Wolf?

A. I do.

Q. 4. How long have you known him?

A. I have known him twenty-five years.

Q. 5. Where did you become acquainted with him?

A. In Hartford.

Q. 6. In Hartford where?

A. Hartford, Connecticut.

Q. 7. Are you any relation to Frank E. De Wolf?

A. A connection by marriage; that is what they call it. Shall I explain that?

Q. 8. Yes; explain it right along.

Mr. BALDWIN: I wish to interpose an objection that the question is immaterial to any issue raised in the case.

A. Well, he married his own cousin, who was the niece of my step-father.

134 By Mr. MORGAN:

Q. 9. Do you know Isabella C. De Wolf?

A. I do.

Q. 10. Who is she?

A. She is a niece of my step-father.

Q. 11. What relation does she bear to Frank E. De Wolf, if any?
A. She is his own cousin and his wife.
Q. 12. You are a citizen of the State of California?
A. Yes, sir.
Q. 13. How long have you resided in California?
A. Since May, 1871.
Q. 14. Do you know whether Frank E. De Wolf and his wife, Isabella C. De Wolf, ever resided in the State of California?
A. They did; they came out in October.
Q. 15. October of what year?
A. The same year, 1871.
Q. 16. Did you ever have any business transaction with them in the State of California?
A. Yes, sir.

Q. 17. What was the first transaction that you had with
135 them after they came to California?

Mr. BALDWIN: I object right there that the question does not appear to be directed to any issues presented by this bill, and therefore I object to it as irrelevant and immaterial.

A. They both visited our home, and while there my husband, being in a very ill state of health physically, he got him to attend to the business for him in the city. The business was getting me money from San Luis from a sale of property and there was no banking house in San Luis Obispo, and everything had to be done through the bank of California, and Mr. De Wolf did it for us.

By Mr. MORGAN:

Q. 18. Was that 1871?
A. In 1871; right there and then, as soon as our means came out which we were to invest in mortgages in San Luis Obispo, which we had already made arrangement for, Mr. De Wolf, through
136 his influence, persuaded my husband to go into the ranch.

Mr. BALDWIN: I object to all this testimony, now that I see the drift of it, as wholly irrelevant and immaterial to the issues presented here.

The WITNESS (cont'g): Mr. De Wolf through his influence persuaded my husband to go into a ranch, which resulted in our buying ten thousand acres of land in San Luis Obispo county with my money; his money was not available at that time.

By Mr. MORGAN:

Q. 19. Whose money was not available?
A. Mr. De Wolf's. I was to get the land and he was to buy sheep to put on that land as soon as he got money sufficient to do it by converting other means, and I got the land, but he never got the sheep.

Q. 20. Well, go on.

137 A. In the meantime I went East and I came back in October, 1872; I left in the spring of 1872. We broke up our

home, then we went to the Grand Hotel with the De Wolf's and I started and went home; while I was absent Mr. De Wolf got a talking to my husband about selling this land.

Q. 21. Now, you do not know what he did while you were absent?

A. I do know, because I had letters.

Q. 22. Just explain that.

A. Because my husband had written to me that Mr. De Wolf had thought that the land was not valuable enough to hold.

Mr. BALDWIN: I object to that testimony on the additional ground that it is hearsay.

The WITNESS (cont'g): And I wrote back to my husband not to sell the ranch there in San Luis Obispo.

Mr. BALDWIN: I object to that on the ground that it is immaterial.

138 The WITNESS (cont'g): He did it, notwithstanding my objection and through his influence, and being patent land, according to the laws of California my signature to the deed given was not necessary. Perrin bought the land from Mr. De Wolf, which was sold at a margin, of which I had no share in.

By Mr. MORGAN:

Q. 23. The San Luis Obispo ranch?

A. Yes, sir; after that. That did not get to my ears until lately. He was persuaded to go into Fresno county.

Q. 24. Persuaded by whom?

A. By De Wolf, who was talking from morning till night. He eat with us and drove with us and everything else, and Fresno was the cry.

Mr. BALDWIN: I object to that on the ground that this Fresno transaction, as well as the San Luis Obispo transaction, of which evidence is now being offered, are both irrelevant and immaterial to any issues in the case.

139 By Mr. MORGAN:

Q. 25. Now, at whose suggestion, Mrs. Hays, did you invest your money in Fresno lands?

A. Mr. De Wolf and Mrs. De Wolf both told me that it was wonderful the money Mr. De Wolf was making—how he doubled his money—and the recourses of Fresno, and I yielded to the persuasions about the land.

Mr. BALDWIN: I object to that, also, on the ground that it is irrelevant and immaterial to any issue raised in this case.

By Mr. MORGAN:

Q. 26. And that is the reason and the way in which you came to invest in Fresno lands, is it, and the only reason?

Mr. BALDWIN: I object to that question, also, on the ground that it is leading, and on the ground that it is irrelevant and immaterial

to any issue raised in the case, and that it is assuming previous testimony given which has been objected to right along.

140 (Last question read to witness.)

A. Yes, sir; that it would be to my advantage, of course.

By Mr. MORGAN:

Q. 27. Do you know Mr. Joseph De Wolf Dimmock?

A. Not personally; but I heard of him from the time he was a boy, and he was a little younger than I was.

Q. 28. Well, how did you first come to know Mr. Joseph De Wolf De Muck?

A. Well, Mr. De Wolf's sister was a schoolmate of mine, and Mr. De Muck was a son of her sister's, who lived in the house where Frank De Wolf lived and his sister lived, where I was constantly visiting. Mr. De Muck is not a son of the schoolmate, but of another sister—an older sister.

Q. 29. Of whom?

A. Mr. De Wolf; he had those two sisters.

Q. 30. Now, when did you first see, if ever, Mr. De Muck in California?

Mr. BALDWIN: I object to that, also, as I do to all this testimony, on the ground that it is not responsive to any allegations or any issue in the case and as, therefore, irrelevant.

141

A. I never saw him here; I do not know whether he has ever been here.

By Mr. MORGAN:

Q. 31. Do you know Mr. J. B. Haggin?

A. No, sir; I do not.

Q. 32. Did you ever have any business transactions with Mr. J. B. Haggin?

A. No, sir; I never had any business transactions with him.

Q. 33. Did you ever meet anybody representing Mr. J. B. Haggin?

A. No, sir.

Q. 34. In any business transaction?

A. A man met me at the Grand Hotel when I came up from Fresno and served a notice on me of foreclosure of mortgage that had been transferred to F. E. De Wolf.

Q. 35. Did you ever have any demand made upon you by Mr. J. B. Haggin for the payment of any money?

142 A. No, sir.

Q. 36. Did you ever pay to Mr. J. B. Haggin any money?

A. No, sir.

Q. 37. Did you ever receive from Mr. J. B. Haggin any specification of indebtedness claimed by him against you?

A. No, sir.

Q. 38. What was the physical condition of your husband when you came to California?

A. He was taken from a sick bed from congestion of the lungs and chills both at the time. He had a long spell of illness at that time. He was said not to be able to live by Dr. Lemoine any more than a day or two, and we had previously been advised to leave to go to Mentoñe, but he became so delicate about that time and he, having a brother in San Luis Obispo, decided to go there. During that last spell of illness in St. Louis with the congestion of the lungs we were going to California; we hurried up our trip to Cali-
143 fornia, and I took him off of a sick bed and put him on the cars, and he kept to the bed in the sleeping cars until he got to Ogden; that was where he got off his bed for the first time.

Mr. BALDWIN: I interpose an objection to that evidence on the ground that it is irrelevant and immaterial.

By Mr. MORGAN:

Q. 39. Just give the year.

A. Well, then he got better from that till he got into California, and we then went to a hotel, and from there we took the first steamer down to San Luis; and he was able to sit up and rode to the steamer in a hack, but as soon as he got to the steamer he went to bed and had a hemorrhage on the steamer. When we got to San Luis Obispo he got better and was up all the time afterwards.

144 Q. 40. Well, what was the matter with your husband, if you know—what was he afflicted with?

A. From the congestive chill, being always very delicate. I married him an invalid, and he had solidification of the left lung, enlargement of the heart, kidney troubles, and I don't know—a complication.

Mr. BALDWIN: This I object to on the ground that it is irrelevant and immaterial, and also on the ground that it is calling for the witness' evidence on a science which she has not shown herself competent to understand—medical science.

By Mr. MORGAN:

Q. 41. Never mind. Now, what was his condition after arriving in California, up to the 12th of December, 1877, say?

A. He was sick. He was never well. He had wonderfully recovered from his illness when he first came out here—as far as a well invalid could go—sick one day and in bed the next, hemorrhage at
145 one time, and always a cough—one trouble to-day and another to-morrow.

Q. 42. Who was the physician while in California?

A. Dr. Wooster and Dr. Heeney had a diagnosis from seven to one at the Grand Hotel; Dr. Fish attended him; was his constant physician; saw him almost daily; I was going to say from the time we were at Tubb's Hotel for two years Dr. Hays was his physician—he was his brother—in Luis Obispo; Dr. Kirkpatrick was his physician while we were in Redwood.

Q. 43. When was Dr. Kirkpatrick your husband's physician?

A. I think we went in 1875, if I am not mistaken; then we went from there to the ranch and back; then to Redwood; he was about four years his physician.

Q. 44. In January, 1877, who was his physician?

A. Dr. Kirkpatrick.

Q. 45. Where was he at that time; where did he reside at that time?

A. Redwood; we went there for the change of climate.

146 Q. 46. Where is Redwood?

A. In San Mateo county; we were obliged to leave on account of his health at Oakland.

Q. 47. What was his physical condition while he was in Redwood?

A. He just mended up there the miserable state he was in before.

Q. 48. Were you with him all the time—attending him?

A. Yes, sir; constantly with him; he never scarcely went out but while I was with him.

Q. 49. Now, during December, 1876, and January, 1877, what was his physical condition?

A. When we were at the ranch it was in 1876.

Mr. BALDWIN: I object to all this testimony as irrelevant and immaterial.

(Last question read to the witness.)

A. He was sick one time and well another day—up and down.

147 By Mr. MORGAN:

Q. 50. Well, what was the character of his sickness, if you know?

A. Lung troubles, principally—lung fever.

Q. 51. Do you know the extent of his lung trouble at that time?

A. Yes, sir: he only had the use of one lung, and that was inflammatory.

Mr. BALDWIN: This testimony, of course, I have got to object to on the ground that it is asking the witness scientific questions, and she does not show any competency, as well as the objection to its irrelevancy and immateriality.

By Mr. MORGAN:

Q. 52. Where were you served with the paper of which you have testified to as being the first intimation you had of Mr. J. B. Haggin?

A. As I came up from the ranch and was at the Grand Hotel. I had just gotten into the hotel with my luggage when I was
148 met at the parlor door with this man. He asked me if I was Mrs. Hays, and handed me the summons.

Q. 53. Now, can you give us the date of about when that was?

A. November 2d, 1876.

Q. 54. Where did you go from the Grand Hotel at that time?

A. Redwood.

Q. 55. Was your husband with you at the Grand Hotel after being served with those papers?

A. No, sir; he came up the following month from the ranch.

Q. 56. I understand you to say that you went from the Grand Hotel, after being served with those papers, to Redwood City?

A. Yes, sir.

Q. 57. Now, when did you next see your husband after that time?

A. About the 24th of December.

Q. 58. What year?

A. The same year. It might have been the 23d; I could not say.

Q. 59. In 1876?

A. Yes, sir.

149 Q. 60. What, if anything, was said by your husband to you or you to your husband when he arrived in regard to the Haggin papers?

Mr. BALDWIN: I object to that as irrelevant, immaterial, and incompetent to any issues in the case.

A. He came up and was quite sick there the first day or two we got there, and seemed to be very much worried about this suit that was pending against De Wolf.

By Mr. MORGAN:

Q. 61. Was there a suit pending against De Wolf?

A. There was a suit then pending against De Wolf; that was the first suit, you know; he was very much worried about that, and this additional trouble of Mr. Haggin's coming on him made him extremely nervous and seemed to trouble him a great deal and made him, probably, iller than he would necessarily have
150 been; and he told me he knew Mr. De Wolf had a great deal of money to help him out—more than we had—and this additional pressure of Mr. Haggin's, after we had heard that he was unscrupulous, if I must say it, and not knowing the gentleman, and so wealthy, and we had that against us, which we were not able to fight against without money or influence.

Mr. BALDWIN: I also interpose objection right here as to any evidence of conversation between the plaintiff and her husband, on the ground that it is irrelevant, immaterial, and incompetent testimony.

The WITNESS (cont'g): Well, then, he thought it would be a case that would ultimately—by the power of wealth against us—it would be a long siege of litigation, and he would probably not live to see it through, and that I would be left with this net-work
151 of legal trouble upon me, and all we had was $1,800; and he seemed to be a little afraid that even that would go, too; and he asked me if I would feel willing—that he thought the matter over and asked me if I would feel willing—to give it up and get a clearance and wipe the whole thing out—get rid of the whole thing; and I think he had talked to Mr. Rearden previously, asking that question on the way up from the ranch.

Mr. BALDWIN: That is specially objected to as hearsay testimony.

By Mr. MORGAN:

Q. 62. Go on, and state all that took place.

Ans. And, of course, I hated very much to do it if there was the shadow of a hope for success, as it had gone as far as it had, and everything in our favor; I thought it was too bad to give it up, but still he seemed so weak and miserable and pleading so that I finally told him I would do just what he desired me to do.

152 Q. 63. What was his condition at that time physically?

A. Exceedingly poor; well, he was very delicate, exceedingly delicate; he had not as much strength as I had even.

Q. 64. Was his physician in attendance on him at that time?

A. He was always taking medicine, and carried it in his pocket. He had enlargement of the heart, and was at any moment liable to have those attacks, and he always carried medicine for those troubles in his pocket, and at any hour we were always sending for physicians, though he was about on his feet.

Q. 65. What was that business transaction between you at that time; was that the settlement of the Haggin suit?

A. To wipe out the whole thing—the DeWolf suit and the Haggin suit and everything, if we could just get out of it and not continue in it all. We would have continued it — all hazards only for this Haggin business coming down on us; it frightened my

153 husband and frightened me, and I did not see there was any prospect, any way of getting out of such strong power as they presented at that time.

Q. 66. Did you discuss that matter?

A. Yes, sir.

Q. 67. Was there anything else said about it? Give the reason that you suggest; did your husband suggest your making a deed?

A. Yes, sir.

Q. 68. What reason did he give for making it, if any?

A. So as not to leave me with that litigation on my hands perfectly incompetent; I had no legal knowledge or money to sustain me.

Q. 69. What do you mean by leaving you?

A. He asked me if I was willing to do it.

Q. 70. You said he was going to leave you. What do you mean by leaving you?

A. I mean in the case of death.

Q. 71. Was he in fear of dying at that time?

154 A. Yes, sir; he was liable to die at any moment on account of heart trouble, and any business worry—any little trouble at all—he was liable to fall dead.

Q. 72. Now, did he discuss it with you in that light—in that view?

A. Yes, sir.

Q. 73. Give, if you can, what he said to you in regard to the settlement; the way he wanted it.

A. Well, I went into his room; I hate to show his weakness so much.

Q. 74. Go on and tell everything—just what happened.

A. I went into the room and found him crying; I asked him what was the matter. "Well," he said it seemed as if all the troubles that were heaping upon him would certainly kill him, and he had so much already. I said I would do just as he desired. He wanted me to get it done; he said the whole thing was
155 more than he could stand, and it was killing him, and he thought that the best thing may be that it would be best to give it up, and asked me if I was willing to do it, and I hesitated; did not know what to think was best myself, and then afterwards he seemed to feel that he would not be so much worried and so much troubled, and I said I would do anything for him that would give him mental relief. He seemed to be in such terrible mental trouble as well as physical that I said I would just withdraw—wipe the thing right out and commence on the new.

Q. 75. Now, who was your attorney during that time?

A. Mr. Winchell—Judge Winchell.

Q. 76. Who acted for you here as your attorney in San Francisco, if you had one?

A. Mr. Rearden.

Q. 77. Which Mr. Rearden—what Mr. Rearden?

A. Timothy Rearden—Judge Rearden.

156 Q. 78. Do you know of ever seeing Mr. De Wolf subsequent to that time—the time you made the deed?

A. No; I do not.

Q. 79. Did you see him in 1884?

A. Of course I saw him then all along.

Q. 80. What time in 1884 did you see him?

A. 1884; I saw him at the Grand Hotel.

Q. 81. Now, before proceeding, I will ask you if you know when Mr. De Wolf left California, placing it in reference to the making of the deed of the Fresno property to Mr. Haggin.

A. Immediately after—well, within a few months or a few weeks; I do not exactly remember.

Q. 82. Well, when did you next see him after that?

A. Oh, I don't know exactly when he left California after that, but it was that year,

Q. 83. Now, my question is, when did you next see him?

157 A. After I made the deed I did not see him at all.

Q. 84. When did you last see him?

A. Well, I saw him this last time he was here at the Grand Hotel.

Q. 85. When was that?

A. That was 1884.

Q. 86. Well, now, when you saw him in 1884 at the Grand Hotel what took place between you?

A. Well, the circumstances of my knowing him there was my sister met Mrs. Wickwear.

Mr. BALDWIN: I object to the question on the ground that it is wholly immaterial and irrelevant to any issue in the pleadings what took place in 1884 between Mrs. Hays and Mrs. Wickwear.

A. Mrs. Wickwear told my sister that Mr. De Wolf was in California, from Europe.

By Mr. MORGAN:

Q. 87. You need not tell what Mrs. Wickwear told you.

158 A. I went over to the Grand Hotel to attempt to see him, thinking that in that time he must have seen how badly he had treated me and how utterly——

Q. 88. (Int'g). Will you be kind enough to tell what took place between yourself and Mr. De Wolf without going into all that?

A. When Mr. De Wolf came in there, into the parlor, not knowing it was me, as I sent word some one wanted to see him, he was surprised at seeing me and he turned ashy pale. He thought it was somebody to lease his land—to buy it. I think he thought so, because he came for that purpose, and he looked disappointed.

Q. 89. Now, tell what took place between you and Mr. De Wolf after you got there.

Mr. BALDWIN: I object to all the testimony of this interview on the same grounds of irrelevancy and immateriality, not tending to prove any issues in the case.

159 A. Then he was so surprised to see me that he did not—he recognized me of course, but he stood there and seemed paralyzed, almost. Then I spoke to him: "Mr. De Wolf, I believe; this is Mrs. Hays;" and he said, "Yes; Florence, how do you do?" And I told him not to call me Florence any more; that was past. Then I told him I came to see him on business; I did not wish to talk about anything else but business, and I came to see him thinking that he probably would do something for me and make some restitution for what he had taken, and he said that he had no —; he says, "I can't talk to you of business;" I says that is what I came for and I would talk of business and no other subject; and he said that I could talk to him six hours if I wanted on any other subject but business. I said I would not talk to him on any other subject but business; that is what I came for and if I had to

160 follow him to the four ends of the earth he should hear me what I had to say, and he told me that I could not talk then, but took out his watch and said he had an engagement and raised on his feet, and I persisted in talking to him, saying that he should hear me, and I went to take my handkerchief out of my pocket and he must have been rather alarmed, at the way he moved and recoiled. I think—I don't know what he thought—that I would shoot him, I guess. Then he insisted that he could not hear me and he started to leave the room and I caught hold of his sleeve and I said, "Frank De Wolf, you shall hear me." He says, "I will tell you what I will do, Florence; I will meet you here and we will talk as long as you want to if you let me go now, and I will be back here at any other hour you choose to name." I told him I had found out that he was untruthful and had broken every promise he

161 *he* had made. He had told utter falsehoods to me from the beginning and I had no confidence in his words, but I would

trust him that once and told him to name the hour. He said one o'clock. I came there at one o'clock and he was not there. I waited until two, but he did not come, but a young man came in from Mr. Baldwin's office and handed me a note from Mr. Baldwin saying that Mr. De Wolf had thought best not to see me again personally, and if I had any business to communicate that I should do it through his attorney, Mr. Baldwin.

By Mr. BALDWIN:

Q. —. Have you got that letter?
A. I think I have; it was simply a note.

By Mr. MORGAN:

Q. 90. Now, where did you and with whom did you consult prior to making the deed to Mr. J. B. Haggin?
A. I consulted nobody except my husband.
162 Q. 91. Did you or not ever visit the city of San Francisco?
A. Yes, sir; I did.
Q. 92. With whom did you visit the city of San Francisco?
A. Mr. Rearden; came down unexpectedly.
Q. 93. Came down where?
A. To Redwood unexpectedly; he told me he wanted me to come to the city to see the De Wolfs in relation to this matter of the deed and the suit.
Q. 94. Now, did you go to the city with Mr. Rearden?
A. I did.
Q. 95. When you arrived in the city with Mr. Rearden whom did you meet?
A. There was a carriage at the depot and Mr. Rearden placed me in the carriage and Mr. De Wolf.
Q. 96. What Mr. De Wolf?
A. Mr. Frank E. De Wolf, who was also there, standing at the carriage door.
Q. 97. Well, where did you go from the depot?
A. To Mr. Rearden's rooms.
Q. 98. Where were they?
163 A. Over the Mercantile Library.
Q. 99. When you got there what did you do?
A. Mr. De Wolf was left with me, I think, there.
Q. 100. Where?
A. At Mr. Rearden's rooms, and he went out to get Mr. Baldwin; I think that must have been the way, but I cannot swear to that because I do not quite remember, and then we talked about making some kind of a compromise.
Q. 101. By "we" whom do you mean?
A. I mean Mr. Baldwin and Mr. De Wolf and Mr. Rearden and myself—at least they consulted me. They did the talking, and then Mr. Rearden came and consulted with me.
Q. 102. I understand you to say that Mr. Rearden went out?
A. Yes, sir.

Q. 103. Well, who was left with you when Mr. Rearden went out?

A. I think Mr. De Wolf was left with me.

Q. 104. Mr. De Wolf was left with you? Well, are you cer-
164 tain whether he was or not?

A. No, sir; I do not know whether that was that day or the next day; I could not swear.

Q. 105. You cannot tell?

A. No, sir.

Q. 106. Well, the next day; put it on the next day. Did Mr. Rearden go out the next day? Were you at Mr. Rearden's office the next day, in other words?

A. His rooms—they were his parlors; in Mr. Rearden's parlor at the Mercantile Library. He went there because it was more quiet, and we had a talk there.

Q. 107. Who was at his parlors?

A. Mr. Baldwin, Mr. De Wolf, Mr. Rearden, and myself.

Q. 108. You said Mr. Rearden left. When was it Mr. Rearden left? That is what I want to get at.

A. It was the first or second day; I really don't remember which of the days—whether it was the first or the second. It was the first day he left me with Mr. De Wolf.

165 Q. 109. How long was he absent and left you with Mr. De Wolf?

A. He was absent about—I should think—an hour.

Q. 110. Now, during that time did anything transpire between you and Mr. De Wolf about this business?

A. Mr. Rearden had told me not to get angry; it was very hard work to talk about it and not get angry, but I did; I tried to lead to the question, and I told him he knew how he was wronging me to have closed on me in that way, and he turned the subject and would not talk with me on the subject; two or three times I lead to it again and tried to make him comprehend and understand and if I could not reach his sense of justice by what I would say, but he would invariably turn the conversation or say if I had done so and so, and then turn it off; he did not wish to listen to me on it.

Q. 111. Well, what did you say to him anyway? Give the
166 substance or the exact language. You told him——

A. (Int'g.) Yes, sir; I told him he had wronged me in the fact of his closing that mortgage on me and freezing me out.

Q. 112. Why did you tell him? Was he bringing any suit to foreclose a mortgage on you?

A. No, sir; but then I knew he had sold it to Haggin and Tevis.

Q. 113. How did you know that?

A. Because notice had been served on me.

Q. 114. That was the only way you knew it?

A. That was the only way I knew it.

Q. 115. What did you tell De Wolf about the Haggin foreclosure?

A. I told him that he had always promised that the first crop of wool of that ranch would pay that mortgage and never to give the mortgage a second thought; instead of that he sold the wool and pocketed the money.

Q. 116. Never mind about that; now, that is the time you
167 came up and the time you made the deed to Haggin for this land?

A. Yes, sir.

Q. 117. Now, who did you treat with on the part of Haggin when making that deed, if anybody?

A. I treated with nobody on behalf of Mr. Haggin.

Q. 118. Well, who attended to the business on the part of Mr. Haggin?

A. Mr. De Wolf, I think. I don't know.

Q. 119. Mr. De Wolf, then, is the only man you saw in that transaction, is it?

A. Yes, sir.

Q. 120. Did you say anything to Mr. De Wolf or give him any reasons why you made the deed to Mr. Haggin at that time?

A. I told Mr. De Wolf in the room at that time that I wanted to wipe out the whole thing on account of Mr. Hays.

Q. 121. Why on account of Mr. Hays?

A. Because it was his ill health. I did it because it was a wife's duty—in other words, to do what he told me to do.

Q. 122. Did you tell Mr. De Wolf that?

168 A. Yes, sir; I did.

Q. 123. At that time?

A. Yes, sir; I told him.

Q. 124. How long after this transaction was it that your husband died?

A. That was in 1877; he died in 1878.

Q. 125. What was his condition from that time to the time of his death physically?

A. Sick and miserable three days and well two days; the physicians every other day, if not every day; medicine every day.

Q. 126. Do you know Mr. Horace M. Barnes?

A. I know very well who he is.

Q. 127. Do you know him personally, Mrs. Hays?

A. No, sir.

Q. 128. Mrs. Hays, I understand you to say you did not know Mr. Joseph De Wolf Dimmock?

A. I did not know him personally, but he was in the house where I visited.

Q. 129. What house?

169 A. His grandmother's house.

Q. 130. Where was that?

A. That was in Hartford, Conn.

Q. 131. When was that?

A. That was about twenty-five years ago, when I was a young girl and he was a little boy, younger than I was.

Q. 132. Do you know whether he was ever in California?

A. Not that I know of.

Q. 133. You do not think he was ever in California?

A. Not that I know of. I would not swear to it.

Q. 134. You never knew of his being in the State of California?

—. I do not think he was ever here.

Q. 135. You never knew of his being in the State of California?

A. No, sir.

Mr. MORGAN: That is all for the present, except for the purpose of identifying some papers.

(Examination continued by the examiner, in conformity
170 with agreement of counsel, until to-morrow, the 25th inst., at 11 o'clock a. m.)

TUESDAY, *August 25th*, 1885.

Present: Mr. Morgan, of counsel for complainant; Messrs. Haggin & Baldwin, for respondents.

Deposition of J. B. Haggin.

Examination-in-chief of J. B. HAGGIN, on behalf of complainant, by Mr. MORGAN:

Q. 1. State your name, age, and residence.

A. My name is J. B. Haggin. I reside in San Francisco.

Q. 2. Mr. Haggin, did you ever have any business transactions, about the year 1877, with John J. Hays and Florence W. Hays?

A. Yes, sir; I did.

Q. 3. Did it or did it not involve a mortgage upon lands situated in Fresno county?

171 A. Yes, sir; it did.

Q. 4. Were you the owner of the mortgage and the debts secured by the mortgage?

A. At that time?

Q. 5. Yes, sir.

A. Yes, sir; I was.

Q. 6. From whom did you obtain the title to the mortgage and the ownership?

A. I think from a man by the name of Dimmock.

Q. 7. Do you remember Mr. Dimmock's first name?

A. No; I do not remember his first name.

Q. 8. Did you ever know Mr. Dimmock?

A. I did not.

Q. 9. How was the negotiation for the purchase of the mortgage and the note from Dimmock carried on; by what medium?

A. Between Mr. Atherton and Mr. De Wolf, on one part, representing Mr. Dimmock, and myself on the other.

— 10. What Mr. Atherton is that?

A. He resided at Menlo Park.

172 Q. 11. What amount, if you remember, did you pay for the note and mortgage?

A. I did not pay anything for the note and mortgage; I agreed to render certain services.

Q. 12. Did you commence a suit to foreclose either the note or the mortgage?

A. Yes, sir; I did.

Q. 13. Do you remember whether that suit was ever carried to a decree or not?

A. No; I do not; but whether it was or not, it was part of the settlement by which the property was conveyed to me.

Q. 14. Did you pay to the parties making the deed to you of the property any consideration in money?

A. Nothing except a nominal consideration that was made in the deed, whatever that was; if there was a dollar named or five dollars named it was paid. It was not the consideration named,
173 but the amount of the mortgage for that was the consideration; the deed was in consideration a settlement of the mortgage.

Q. 15. You say that the consideration from yourself to Dimmock for the note and mortgage was services rendered by you to Dimmock?

A. To be rendered.

Q. 16. I understood you to say, Mr. Haggin, that you had never known Mr. Dimmock personally?

A. No; I never did.

Q. 17. What subsequently was done by you with the land; was it ever conveyed; if so, to whom?

A. A portion of it was conveyed. I do not remember now, but the records will show to whom it was conveyed.

Q. 18. Do you remember whether or not about February 1st, 1877, you made a deed to Dimmock?

A. No; I do not remember positively.

Q. 19. Do you remember of ever having made a deed to Mr. Dimmock for the land or any portion of the land conveyed to you
174 by John J. Hays and Florence W. Hays?

A. I made no deed, not according to my recollection—on record. I think whatever deed I made is recorded. I remember conveying, either to Dimmock or to Dimmock's order, I have forgotten which, a portion of that property, but the date of the deed and the time of its conveyance and to whom it was conveyed I do not positively remember.

Q. 20. Now, do you remember, if you did make a conveyance to Dimmock of the land or any portion of it, whether you had received any consideration for the deed?

A. No; I did not receive any consideration; it was in fulfillment of my agreement with Dimmock.

Q. 21. Do you know, Mr. Haggin, what relation Dimmock bore to Frank E. De Wolf or Isabella C. De Wolf, his wife?

A. De Wolf was the attorney in the suit for Dimmock.
175 What relation was between him and his wife and between him and De Wolf's wife I do not know.

Q. 22. Mr. Haggin, have you got among your papers or in your pocket any reference or any entry which would show about the time you made the deed to Dimmock?

A. I have not. Whatever papers I have have been delivered to the attorneys or to some of them; I do not know who. I have no papers in my possession.

Q. 23. Do you remember, Mr. Haggin, about the time that this settlement or statement was had between De Wolf and his wife and John J. Hays and his wife, in the year 1877?

A. I do not know that any settlement was ever had between them. I only know this, that after I brought suit to foreclose on that mortgage it was settled by me; the matter was settled by conveyance of the property to me. What settlement occurred between De
176 Wolf and his wife and Hays and his wife, I know nothing about. They never were before me nor in my presence that I know of.

Q. 24. Who, Mr. Haggin, acted for you in the settlement of that matter of the mortgage?

A. I acted for myself.

Q. 25. Did you see Mr. or Mrs. Hays about the matter at all?

A. I did not see Mrs. Hays.

Q. 26. Did you ever see Mr. Hays about the matter?

A. Well, I could not tell, unless I saw him now, whether I saw him or not.

Q. 27. You don't remember, then, ever to have seen them?

A. However, this is a matter that is very difficult for me to remember in detail so as to answer your questions satisfactorily. This I remember, and only this, that the property was conveyed to me in settlement of that mortgage, and whether it was Hays or somebody representing Hays, who was his successor in interest, or not,
177 that made the arrangement with me, I do not know, but the deeds were produced to me and settlement was made. I do not now remember who it was that represented Hays and wife, nor am I entirely certain from memory that Hays and wife conveyed it to me, but I am certain that the property was conveyed to me by some one in settlement of that mortgage.

Q. 28. Mr. Haggin, do you know who paid the costs of that litigation on the foreclosure of that mortgage as far as it went?

A. Yes, sir; I did.

Q. 29. Was it ever refunded to you?

A. No; never.

Q. 30. Did you ever have in your possession the note upon which that mortgage was given?

A. Yes, sir; I did; and the mortgage.

Q. 31. Do you remember how you came in possession of that note and mortgage?

A. Yes, sir. It was assigned to me by Dimmock—by his attorney-in-fact, De Wolf.

178 Q. 32. Do you remember whether De Wolf exhibited to you the written power of attorney at that time?

A. I do.

Q. 33. Do you remember whether it was recorded or not?

A. No; I do not; but if he signed the mortgage it must have been recorded either then or subsequently.

Q. 34. Did you ever, prior to coming in possession of that note and mortgage, have any conversation with De Wolf about becoming the owner of it?

A. Yes, sir; I did.

Q. State what took place between you and De Wolf about that matter.

A. De Wolf and Atherton came to see me and wanted to know if I would take that note, for two reasons—one with a view of loaning money upon it, and another with the view of collecting it or settling it or compromising and realizing whatever was to be realized
179 from it, and the result of that was an agreement upon my part to do so—to take it.

Q. 35. Do you remember, Mr. Haggin, how the note was endorsed?

A. No; I do not.

Q. 36. Do you know whether Dimmock ever indorsed the note to you?

A. No further than this, that the note was properly and legally transferred to me; I do not remember whether Dimmock endorsed it or whether it was endorsed by De Wolf for Dimmock, but I remember I obtained title to the note and mortgage and I brought suit in my own name.

Q. 37. I understand you to say you paid no consideration to Dimmock for the note or the mortgage?

A. No; that is correct, except the services that I have said were to be rendered.

Q. 38. Do you know whether in a settlement of that case brought to foreclose that mortgage you were consulted about the settlement at the time?

A. I was; yes, sir.

180 Q. 39. Do you remember who acted for Mr. De Wolf, with whom you consulted?

A. Oh, De Wolf consulted with me about it as to the settlement, as to what I would be willing to do; what settlement I would be willing to make.

Q. 40. Well, what I want to get at is who controlled that settlement—you or De Wolf?

A. I did.

Q. 41. Exclusively?

A. Exclusively.

Q. 42. Do you know Lloyd Baldwin, the lawyer?

A. I think so.

Q. 43. Do you know Mr. T. H. Rearden, now Judge Rearden?

A. I think so.

Q. 44. Do you remember having any communications with them or consultations with them or either of them about that time about this settlement?

A. No; I do not; I would state further than that, just here, that my understanding, derived either from De Wolf or some other
181 source, was that the mortgagors had no property except this, and that all I could get out of it would be this property; that would be all I could get by pursuing the foreclosure to a judgment and sale; that would be the result, and if I got a sale of the property and release of all property that I by that means would obtain what I could by other means; that was my reason for making that settlement.

Q. 45. Do you know whether Mr. De Wolf or Mrs. De Wolf paid anything to Hays or Mrs. Hays at the time of that settlement?

A. I do not.

Q. 46. Do you remember, Mr. Haggin, of ever having seen Mrs. Hays or Mr. Hays or any one acting for them or on their behalf prior to the time you received that deed?

A. I remember seeing some one; I do not remember whether it was Mr. Hays or some one representing Hays and wife—not as
182 attorney; I do not know that I would know Hays unless I saw him now.

Q. 47. Now, Mr. Haggin, you remember who delivered you the deed?

A. This party who brought it to me?

Q. 48. Do you remember who it was?

A. No; I do not.

Q. 49. Do you remember whether it was Mr. Lloyd Baldwin?

A. Oh, I know it was not Mr. Baldwin; the deed was delivered to me satisfactory, though.

Q. 50. Do you remember ever having any communication during that period of settlement with Mr. Lloyd Baldwin?

A. No; I do not know why I should. (Here Mr. Baldwin entered.)

Q. 51. At whose suggestion, if any one's, did you make the deed to Mr. Dimmick of this land or interest in this land?

A. Well, my agreement with Dimmick was to give him a certain portion of the proceeds that I realized from the note and
183 mortgage, and in pursuance of that arrangement I made a deed over to Dimmick or to somebody for him, who I do not now remember.

Q. 52. Did Mr. De Wolf at that time state to you what the relationship existing between him and Dimmick was?

A. No; he did not.

Q. 53. Did you know it from any source?

A. I knew the relationship was that of principal and attorney.

Q. 54. That was the only relationship?

A. I did not know.

Q. 55. Did Mr. De Wolf ever make any representations to you as to what relationship Dimmock bore to him in this transaction?

A. No; none at all; I do not know what relationship he bore to him.

Q. 56. He represented to you that Dimmock was the owner of that note and mortgage?

184 A. I would not have taken the assignment from Mr. Dimmock unless it has satisfactorily appeared that Dimmock was the owner.

Q. 57. Did you ever receive any written communications from Mr. Dimmock in regard to this transaction?

A. I am not certain. I do not know whether I did or not.

Q. 58. How often during that negotiation about the settlement of that foreclosure suit, if you can remember, did you see Mr. De Wolf about the matter—several times?

A. I cannot tell whether it was two or three times or four times; it was, perhaps, once or more.

Q. 59. And you do not know Mrs. Hays at all, do you, Mr. Haggin?

A. Not that I know of; I do not know as I ever saw her.

Q. 60. You do not remember Mrs. Hays?

A. No; I do not remember ever having seen her. Is this Mrs. Hays here (referring to complainant)?

185 Q. 61. Yes, sir.

A. I do not think I ever saw her before.

Q. 62. You never paid any consideration to Mrs. Hays for deed?

A. No, sir.

Q. 63. And I understand you to say that Dimmick paid nothing to you for the deed?

A. Yes, sir; I so stated.

Cross-examination of J. B. HAGGIN by Mr. HAGGIN:

Q. 64. You say you never paid any consideration at all to Mrs. Hays, or received any from Dimmick for the several deeds mentioned. You mean except as you have previously stated?

A. Except as I have previously stated. I will just state here the consideration to Hays and wife was the relinquishment of the debt—satisfaction of the debt—but I understood the attorney to

186 mean any specific consideration in money or other valuable—paid at that time apart from any other transaction.

By Mr. MORGAN:

Q. 65. Now, Mr. Haggin, let me ask you a question. If the consideration of the dismissal of the suit and the deed for the land was the relinquishment of the mortgage and debt, to whom was that relinquished?

A. To the maker, whoever it was.

Q. 66. By whom was it made?

A. The relinquishment?

Q. 67. Yes.

A. Made by me.

Q. 68. Did you ever have any interest in that note or mortgage being relinquished?

A. Yes, sir.

Q. 69. What amount did you own in it and how did you obtain title in it?

A. It was all transferred to me.

Q. 70. For what consideration was it all transferred to you?

187 A. Consideration of services I was to render.

Q. 71. Now, state the services and what they amounted to—the character of the services.

A. I was to collect that note, if I could, and pursue it to foreclosure and sale; sell and dispose of the property and manage it generally.

Q. 72. You were to be paid contingent out of the proceeds, were you?

A. No, sir; they were to be paid out of the proceeds—contingent.

Q. 73. Well, how were you to be paid for that service?

A. I took my payment; I took the assignment of my note and mortgage; that was my payment.

Q. 74. But what money consideration did you get for that?

A. I did not get any money consideration for it.

Q. 75. But were to render services thereafter?

A. Yes, sir.

Q. 75. And the services were?

188 A. In the collection of that and whatever I could realize out of that. I was to give to Dimmock a certain proportion. If I did not realize anything I gave him nothing.

Q. 76. With whom did you make that arrangement—with Dimmock, directly, or with De Wolf?

A. With De Wolf.

Q. 77. That was the only consideration, then, that you paid for this note?

A. That was all.

Q. 78. Then when you say your relinquishment of the debt was the consideration of the deed you mean that it was your relinquishment of the debt given at that time?

A. Yes, sir; I owned the debt.

Q. 79. You owned the debt in the manner in which you have stated?

A. No; absolutely.

Q. 80. Well, I say in the manner in which you have stated you came by the title of the note and mortgage?

A. Yes, sir.

189 *Deposition of Chas. A. Kirkpatrick.*

Examination-in-chief of CHARLES A. KIRPATRICK, on behalf of complainant, by Mr. MORGAN:

Q. 1. State your name, age, place of residence, and occupation.

A. Charles Kirkpatrick; age, 62; living in San Francisco, and by occupation a physician and surgeon.

Q. 2. Doctor, did you know in his lifetime Mr. John J. Hays?

A. I did.

Q. 3. How long did you know him before his death?

A. I knew him, I think, from 1874 to 1878.

Q. 4. Were you ever employed as physician to attend him at any time?

A. I was.

Q. 5. Will you please state whether you accepted the employment and what you did; what condition you found him in?

Mr. BALDWIN: I interpose an objection here to that testi-
190 mony as irrelevant and immaterial to the issue in the case.

A. Well, I accepted the employment and found him, on my first acquaintance with him, suffering from bronchial and pulmonary dis-

eases, with other complications that would necessarily follow such derangement of the air passages and organs.

Q. 6. Well, will you state his physical condition growing out of that condition of affairs at that time?

A. His physical condition was not good; in the first years of my aquaintance with him he was confined to his bed, but he was up and about, and my instructions were to be about as much as he could, but his physical condition was very poor.

Q. 7. About what time was that, Doctor—what year?

A. Well, commencing from 1874, it continued; his physical invalidity and physical force continued to decrease gradually
191 on up to the time of his death, in 1878; there was a gradual wasting away of his powers of life, which would naturally follow from that disease.

Q. 8. Take it at about, if you know, January, 1877.

A. Well, I could not hardly make a comparison. As I stated, there was a gradual failure, and after, in 1877, which was probably eighteen months *probably* before the date of his death, I could not give it any more definite; this disease was progressing and placed him in a very weakening condition.

Q. 9. What was the extent, Doctor, of the pulmonary affection that you stated that he was laboring under?

A. Well, the extent was a general inflam-ation of all the pulmonary organs. At my first examination there was a consolidation of a large portion of the left lung—one lobe entirely consolidated; there was no respiration discernible at all through it. It was in a condition that we call hepatized; that is the term that is ap-
192 plied to all consolidated lungs when it is still organized, but is not in a condition to perform the functions of the lung, yet it is a lung organized—tissued.

Q. 10. Besides this pulmonary affection, what was his physical condition outside of that?

A. Well, there was a derangement of the kidneys; that would be one of the complications; a deranged respiration and a deranged arterialization of the blood, leaving the blood in a condition that all the other blood would suffer from the lack of proper nutrition to be derived from healthy blood, and a general breaking down of the physical powers, more than any definite derangement, excepting any complications that were involved; and also a derangement of the action of the heart, a sympathetic functional derangement of the action of the heart, for the same reason that the kidneys had become deranged through the lack of proper nutrition and
193 from nervous derangement, which would also be one of the results of the debilitated physical system.

Q. 11. Now, Doctor, would or would not that state of affairs existing physically with a man tend to in any way affect his nervous system?

A. Decidedly, yes.

Q. 12. Well, would it to any great extent, or simply to a small extent?

A. Well, it would to the extent of the failure of the vital powers and organs to perform their functions.

Q. 13. Would a man in such a condition as you have described Mr. Hays to be be fit to attend to the ordinary affairs and duties of life?

A. To a certain extent, yes; but to the extent to which he would be able to perform those duties would depend upon the character of the duties to be performed.

Q. 14. Well, could a man under such circumstances bear up physically under adverse circumstances, say, for instance—I will
194 state hypothetically to you, as an illustration, that he was involved in a lawsuit, which would in its results, if adverse to him, virtually take all that he possessed; if he was a man, say of family—a married man with children—now, would or would not a man situated in that condition and thus physically, as you have described him, be as well equipped to attend to such an affair as that as a man in the full possession of all his physical faculties?

Mr. BALDWIN: I will interpose an objection there that the question is irrelevant, incompetent, and immaterial to the issues in the case.

A. Most decidedly not. He would not be able to meet the issues under such circumstances.

By Mr. MORGAN:

Q 15. Would a man in the physical condition in which you have described Mr. Hays about January, 1877, be as capable of
195 transacting business of any degree of magnitude or to the slightest degree complex in its nature as a man in the full possession of his faculties and in physical health?

A. No; of course I don't think so.

Q. 16. Now, will you state why and upon what you base your opinion that he would not be? Just give, if you can, the reasons why he in such a condition would not be as well and as competent to transact business as a man otherwise in the full possession of his physical faculties.

(Same objection as to the last question.)

A. Well, he would not be capable of meeting the issues from the fact of lack of force and vitality; that lack of force and vitality would depend upon the lack of the system. The brain and all the organs necessary to produce the physical results which would show force and strength would lack of
196 power or ability to perform those functions, and the reason why they would lack that power would be the stomach being deranged by reasons of its sympathetic relation with the lungs and all the organs necessary to the complete building up and the keeping of the physical frame in its proper condition; would depend first upon the stomach, then upon the character of the blood that was formed by the digestion and nutrition, and then the brain, if it did not receive proper nourishment, would not be able to

perform the functions that devolve upon it in the transaction of business which would require that decision and the reasoning to arrive at conclusions that would be the proper result of a healthy brain with good healthy nutrition.

Q. 17. Then I understand you to say that the mental faculties of the man thus physically circumstanced as you have described Mr. Hays would be to some extent impaired?

(Question objected to. Question withdrawn.)

197 Q. 18. Now, would or would not, in your opinion, the mental faculties of a man in the physical condition in which you have described Mr. Hayes be impaired to any extent?

Mr. BALDWIN: To that I wish to interpose an objection that there is nothing in the pleadings that warrants the testimony asked, and that it is irrelevant and immaterial to the issues in the case.

(Last question read.)

A. They would be impaired very materially.

By Mr. MORGAN:

Q. 19. What would be the nervous condition or condition of the nerve system of a man in the condition in which you found Mr. Hays at that time?

(Question objected to. Question withdrawn.)

Q. 20. What was the nervous condition of Mr. Hays in January, 1877?

Mr. BALDWIN: I object to that on the ground that the question has already been asked and answered by the witness.

198 A. He was extremely nervous and sensitive, and easily affected by almost everything surrounding him.

By Mr. MORGAN:

Q. 21. Would or would not a man in the condition in which you found Mr. Hays at that time be apt to indulge in fancies and to magnify small things into questions of serious consequences more so than a man in the full possession of both his mental and physical faculties?

Mr. BALDWIN: I object to that as specially irrelevant and immaterial.

A. He would.

By Mr. MORGAN:

Q. 22. To what causes would you attribute that?

A. To the lack of power to designate and determine between the importance of the subject as presented to him from the lack of concentration of brain power to determine the issues between the two conditions.

Q. 23. Doctor, how long did you continue to be the physician of Mr. Hays after your employment?

A. Up to the date of his death.

Q. 24. Just please give the causes of his death—what he died of.

199 A. The immediate cause of his death was gangrene of the consolidated lung, with a formation and bursting of an abscess from the gangrenous lung—that portion of the lung that had been consolidated.

Q. 25. Do you know when he died?

A. I do not remember the exact date; it was in November, I think, of 1878.

Q. 26. Doctor, was the case of Mr. Hays made by the medical profession a case of special inquiry, do you know?

A. Not to my knowledge, although I heard of the treatment and history of the case from others; but after he came under my care it was after that time; there was no special consultation in regard to the matter outside.

Q. 27. You do not know whether any papers were written upon his case?

A. No; I do not, sir.

Mr. MORGAN: That is all.

200 Cross-examination of CHARLES A. KIRKPATRICK by Mr. BALDWIN:

Q. 28. How long do you say you have been in attendance upon Mr. Hays, Doctor?

A. My special attendance upon him was from, I think, about April, 1875.

Q. 29. From April, 1875, until the time of his death?

A. Until the time of his death, though I had been consulted by him in a casual way soon after my acquaintance with him in 1874 as a friend meeting him; I had not absolute charge of the case until 1875.

Q. 30. The case did not differ any materially, I suppose, from other cases of pulmonary diseases, Doctor; it was not an uncommon case?

A. Yes, sir; it was an uncommon case from the manner of its termination; gangrene of the lungs cannot be considered a common case.

201 Q. 31. Well, it was uncommon in point of its termination, but in its progress and history was not an uncommon case, was it?

A. Not specially so.

Q. 32. The solidification of the lobes of the lung is not very uncommon, is it?

A. Oh, no, sir.

Q. 33. As a general rule I may call him a consumptive. As a general rule a consumptive or the disease of consumption does not affect a man any further than it weakens the force of the body, does it? It affects a man from weakening of the force of the body, not otherwise. Is not that a medical theory?

A. No, sir; I do not so understand it. There are some diseases — affect the mind and some where the lesion would not be considered so great as it is in some others.

Q. 34. Now you speak of the lesion. Lesions where?

A. Lesions is the term applied to a departure. The abnormal condition of any organ is called a lesion.

202 Q. 35. You do not call a lesion a wound, then?

A. No, sir; it is a departure from the healthy condition.

Q. 36. There is no connection between the brain and the pulmonary disease any more than weakening of the force?

A. It is from the reflex action and of course, the weakening of the physical force. There is such an intimate connection between the two that you cannot say where one begins and the other leaves off.

Q. 37. Is not that the case of all diseases which prostrate the the body? Does not that correspondingly weaken the force of the mind?

A. I don't think it does.

Q. 38. You do not believe in the doctrine of a sound mind in a sound body to mental vigor?

A. I think a portion of the body may be diseased and not affect the mind at all. There are others that would absolutely do

203 it by the—well, from the relation that one bears to the other.

Q. 39. Well, can there not be diseases of the mind unless it be somewhere in the brain or in the spinal cord?

A. No, sir; I do not think so.

Q. 40. Well, if I understand you, I understand you to say that Mr. Hays, his power of mental endurance was diminished by reason of his feebleness of physical organization; that was about the sum and substance of it; not that there was any disease directly affecting the mind?

A. The mind was only the result of the action of the brain, and if the brain does not receive proper nutrition and good, healthy digestion and assimilation—if it does not receive proper nourishment, it is certainly incapable of producing a healthy physical function of a sound mind.

Q. 41. Is not that supposed, to a certain extent, to be the result of all diseases which prostrate the physical powers?

204 A. If it has to do with digestion and assimilation it is, and if not, not.

Q. 42. Was Mr. Hays, at any time during your acquaintance with him, in a condition to attend to business?

A. Yes, sir; certain kinds of business.

Q. 43. Did you not find him rather an active and accurate business man?

A. Yes, sir.

Q. 44. Did you not find him rather a good man for business?

A. I could not say that; no, sir.

Q. 45. Did you not find his mind always clear on all the subjects where you had occasion to consult him?

A. No, sir.

Q. 46. When did you first observe any diminution of the mental powers?

A. I could not state as to when first, because on my getting acquainted with him I had learned already from peculiarities and by comparisons that his actions in regard to transactions and
205 comparing them with the performance of other parties in different circumstances, and my attention was called to it simply from noticing those actions in connection with my acquaintance with him in the transaction of his business.

Q. 47. Was not his mind about the same up to within six months of his death as it had been at any time during four or five years, say?

A. No, I don't think so. I think just as I say, that the physical depreciation of vital powers—physical force of his mind and the physical evidences of it followed in correspondence with it.

Q. 48. Was it a gradual decay or gradual loss of mental power?

A. I think so.

Q. 49. Corresponding with the loss of physical power?

A. Yes, sir.

Q. 50. Was the process of consumption going on gradually all the time in the lungs—steadily—gradually going on until the time of his death?

206 A. No; I could not say that, because the lung being out of sight, as to whether there was a constantly increasing deterioration I could not say.

Q. 51. Well, as he approached his last moments, Dr. Kirkpatrick, did his power correspondingly fail or did he drop suddenly at the end?

A. No; they correspondingly failed,

Q. 52. Then it was a gradual falling off of the physical powers that carried him away—that he died of?

A. Yes, sir; I think so.

Q. 53. But whether the consumption of the lungs was gradually going on you do not know?

A. Well, the physical evidence that I had of the formation of the abscess—of course there was a time that it was beyond my ability to know or comprehend when the formation of this abscess commenced. The commencement of the formation and perfection, if I may use the term, of the abscess of course was going on in the lung, but that was beyond my comprehension.

207 Q. 54. Was it the abscess that you spoke of which laid the foundation for the solidification you have already described?

A. No, sir; it was the solidification that laid the foundation for the abscess.

Q. 55. The solidification preceded the abscess?

A. Yes, sir; the abscess was the breaking down of the cohesion of the solidified lung.

Q. 56. Well, was it the formation of the abscess and the result thereof that carried him away?

A. Well, I do not know whether that would be applied to it or

not. It was co-existent with it; it was one of the facts in the production of his death.

Q. 57. Do you find that a consumptive is apt to be irritable?

A. I do.

Q. 58. During the summer of 1877 did you not find Mr. Hays in about the same condition in respect to his ability to attend to business as he had been for two or three years before that?

208 A. No, sir; I do not think so.

Q. 59. You do not think he was so well—able to attend to business?

A. No, sir; when I first knew him he seemed to be brighter and more cheerful than he did afterwards.

Q. 60. What did you find with regard to the climate of Redwood as to whether it was beneficial or otherwise?

A. I think that for a time it was beneficial.

Q. 61. When he first came there?

A. Yes, sir.

Q. 62. Do you think it finally turned and became worse for him?

A. No; I do not know that it did; I think the result would have been the same anywhere.

Q. 63. That is, the disease was incurable?

A. Yes, sir; I think so.

Mr. BALDWIN: That is all.

(Examination continued by the examiner, in conformity with agreement of counsel, until 2.30 p. m.)

209 AFTERNOON SESSION,
TUESDAY, *August 25th*, 1885.

Present: Mr. Morgan, of counsel for complainant; Messrs. Haggin & Baldwin, for respondents.

Cross-examination of FLORENCE W. HAYS by Mr. BALDWIN:

Q. 136. Mrs. Hays, how old are you?

A. I am forty my next birthday; I am thirty-nine now.

Q. 137. When were you married to Mr. Hays?

A. November, 1862.

Q. 138. What was the date of Mr. Hays' death?

A. November, 1878.

Q. 139. In your direct examination you spoke of a suit against Mr. De Wolf and Mrs. De Wolf. When and where was that suit brought?

A. It was brought in Fresno county; I think it was January 13th, 1876. I first talked with Mr. Winchell and the suit set in September 30th, 1876.

210 Q. 141. It was brought by whom?

A. By myself.

Q. 141½. Who were the attorneys employed in that suit, on both sides?

Mr. MORGAN: I object to that because it is not the best evidence.

A. Judge Winchell was my attorney and Mr. Rearden was my attorney.

Q. 142. You know that Mr. Rearden attended to the case in the supreme court here?

A. Yes, sir; that was the point that was to be decided.

Q. 143. He argued it for you in the supreme court?

A. Yes, sir.

Q. 144. What property was involved in that suit?

A. Lands in Fresno.

Q. 145. Was it the same land that was involved in this suit?

(Question objected to by Mr. Morgan on the ground that the record is the best evidence.)

A. Yes, sir.

Q. 146. The mortgage that you have spoken of, by whom
211 was that made, who executed it?

(Question objected to by Mr. Morgan as not the best evidence and as incompetent.)

A. I presume that I did.

Q. 147. And what property was involved in that mortgage?

(Question objected to on the same grounds as to the last question.)

A. The property was land in Fresno; I have forgotten the number of sections.

Q. 148. Was it the same property that is involved in this suit?

A. Yes, sir.

Q. 149. What was the amount of that mortgage?

(Question objected to by Mr. Morgan on the same grounds as stated in the last objection.)

A. $10,000, I think.

Q. 150. Well, now, might it not be something more than $10,000?

(Same objection by Mr. Morgan on the grounds as above stated.)

A. I would not swear to it; I presume it was not.

212 Q. 151. Do you know what rate of interest it bore?

(Same objection by Mr. Morgan; the same grounds.)

A. No, sir; I do not.

Q. 152. You stated you were served with a summons in the suit of foreclosure upon this mortgage brought by Mr. Haggin against you at the Grand Hotel?

A. Yes, sir; on the 7th of November, 1876.

Q. 153. Your suit against Mr. De Wolf and the foreclosure of Mr. Haggin were both pending at the time of the meeting that you have spoken of at Mr. Rearden's office?

A. Yes, sir.

Q. 154. How long were the parties that you mentioned you met there, at Mr. Rearden's office, in possession, as near as you can remember?

A. I think three days—this Friday at noon—I came about 11 o'clock. Mr. Rearden came at 11 o'clock and I left at one or
213 somewhere around there, and I did not get home. I expected that night—I intended to go home, but I did not. I stayed until the next day and it was too late. I lost my train at San Mateo and had to stay over until the next morning; that was Friday and Saturday, two days.

Q. 155. As a part of the adjusting made on that occasion, do you remember if some of the money was to be paid to Mr. Brown at the Bank of California?

(Question objected to by Mr. Morgan as not the best evidence.)

A. I remember distinctly, when we went out of that room, that I said under no condition would I compromise unless on certain conditions, and that condition was that Mr. Brown should be paid in full, I suppose at the time, and Mr. Winchell should be paid for his services. Mr. Brown had a note, without any security at all, of $1,000 against me, which I must pay, and I supposed all the time that it was paid until I heard afterwards from Mr. Rearden
214 that it was only fifty cents on the dollar, which mortified me very much indeed, and I felt very bad about it.

Q. 156. What did you say the amount of the debt was?

A. $1,000.

Q. 157. Did you not know that between $800 and $900 was paid and Mr. Brown expressed himself entirely satisfied?

A. Mr. Brown said he did not question my right to a settlement. It was done to oblige me and not Mr. De Wolf.

By —. MORGAN:

Q. 158. When did Mr. Brown tell you that?

A. He told me so when I first spoke to him—when I first went down to see Mr. Brown.

Q. 159. When was that?

A. May.

Q. 160. What year?

A. This year—1885.

By Mr. BALDWIN:

Q. 161. Mrs. Hays, as a matter of fact, was not some three or four hundred dollars also paid to you?

A. Not that I ever saw. That I can surely say, and I do
215 not ever remember hearing of it.

Q. 162. Well, supposing it had been paid to your husband would he be authorized to receive on your behalf?

(Question objected to as incompetent and immaterial.)

A. No, sir; he would have told me.

(Question repeated.)

A. Yes, sir.

Q. 163. So if it was paid to him you would acknowledge it as if paid you?

A. Certainly.

Q. 164. Do you say, Mrs. Hays, this is the first time you were ever informed that a sum of between about $300 was paid as part of the settlement?

(Question objected to by Mr. Morgan on the ground that there is no evidence that she now admits that the sum of $300 was ever paid; that there is no evidence here that that was ever paid; and also on the ground that she has not been informed that any $300 was
216 paid as part of the settlement.)

A. I do not ever remember of having heard of it before.

Q. 165. Then, as a result of the meeting at Mr. Rearden's rooms, both suits were to be dismissed, the debt of Mr. Brown was to be paid, and the fee of Mr. Winchell was to be paid, and the conveyance was to be made to Mr. Haggin, was it not?

(Question objected to by Mr. Morgan on the ground that it is an improper question and immaterial and irrelevant.)

A. I do not remember Mr. Haggin's name mentioned.

Q. 166. Well, the deed of the property to somebody, then?

A. Yes, sir; I made a deed.

Q. 167. Then, as the result of the meeting at Mr. Rearden's rooms, both suits were to be dismissed, the debt of Mr. Brown was to be paid, and the fee of Mr. Winchell was to be paid, and the conveyance was to be made to Mr. Haggin, was it not, of the property or somebody else?

217 A. Yes, sir.

Q. 168. Did you see Mr. De Wolf after this meeting at Mr. Rearden's rooms?

A. No, sir; I did not; but I saw him lately.

Q. 169. Until 1884?

A. No.

Q. 170. Soon after the meeting at Mr. Rearden's rooms was terminated you returned to Redwood City, did you?

A. Yes, sir.

Q. 171. And then did you or Mr. Hays come down again to close up the transaction?

A. Mr. Hays came back.

Q. 172. Mr. Rearden, he had one room, had he?

A. He had two rooms, parlor and bedroom.

Q. 173. Which room did the parties occupy?

A. Well, it was cold and there was a fire in his bedroom and I went in there for a time. I think we were in both rooms, if I am not mistaken: the doors opened onto each other—folding
218 doors. I think we sat around the fire.

Q. 174. Well, the negotiation occupied quite a number of hours from the beginning to the end?

A. Occupied all day.

Q. 175. And more than one day?

A. More than two days.

Q. 176. Mr. Rearden was present all the time, was he not, Mrs. Hays?

A. Yes, sir; Oh, no; I was alone with Mr. De Wolf first about two hours—Mr. Rearden was hunting you.

Q. 177. Well, you say at that time you commenced talking business to Mr. De Wolf and he declined to talk business in the absence of the attorneys?

A. He did not say he declined, but simply turned the subject and refused to answer or would bluff me off from my question.

Q. 178. Do you know who arranged this meeting at Mr. Rearden's office?

A. Mr. Rearden, I presume.

Q. 179. How long had you lived on this land in Fresno county?

A. Thirteen months, about.

219 Q. 180. You did not at that time regard the land as of good quality, did you?

(Question objected to by Mr. Morgan as incompetent, immaterial, and irrelevant.)

A. Not as good as represented by any means for the purpose they were bought for.

(Last question read.)

(Same objection renewed.)

A. I would say, decidedly, they were not good for the purpose they were bought for.

Q. 181. Did you not at that time regard the lands as of less value than the amount of the mortgage against them?

(Same objection renewed.)

A. Certainly not. I was told that the value of the land would be in production of feed, which would keep so many sheep there, off which sheep the first crop of wool would pay the mortgage.

Q. 182. Well, you had been there long enough to form an opinion as to whether the lands were capable of doing that?

220 A. I have been away from that long enough.

Q. 183. Had you not been on the lands for quite a long time?

A. No, sir; I found out they were not what they were represented before I went on the land.

Q. 184. Well, after you went on the land did you change your mind as to the quality of the land?

(Same objection as above.)

A. I simply felt Mr. De Wolf was defrauding me some way or another, and I simply went down on the land to get possession before I brought suit for what I consider- forgery.

Q. 185. How long were you on the land—in all; did you live on the land?

A. From September to November. I went in September, 1875, and I left November 1st, 1876.

By Mr. MORGAN: I move to strike out all this testimony so far on the ground that it is not cross-examination and does not address itself to the subject-matter in any way brought out by the direct examination.

By Mr. BALDWIN:

Q. 186. Did you not at that time form and express the
221 opinion that the entire lands were not worth more than $5,000?

(Question objected to by Mr. Morgan as irrelevant, immaterial, and not cross-examination.)

A. I did not think it was worth two bits for the purposes I bought it for.

(Last question read.)

(Last objection renewed.)

A. I never said so.

By Mr. MORGAN:

Q. 187. In this suit brought by you against the De Wolfs in Fresno county was there any motion by the defendant to change the place of trial to San Mateo county?

(Question objected to as irrelevant, immaterial, and incompetent and not cross-examination.)

A. Yes, sir; it was there in Fresno.

Q. 188. I say to change the place from Fresno to San Mateo county; to change it from Fresno; to bring it up to San Mateo county?

A. I do not know.

Q. 189. Did you make an affidavit in that case against the motion to change the place of trial, in which you stated, among
222 other things, that you expected to prove, by some fourteen witnesses who were residents of Fresno, that these lands were not of first-class quality, either as agricultural or grazing lands, and that at the time you purchased them they were not worth more than $2.50 an acre?

(Question objected to — Mr. Morgan as irrelevant, immaterial, and incompetent and not the best evidence.)

(Question repeated.)

A. I think I did.

Q. 190. Did you not at that time believe these facts to be true at the time you made that affidavit?

(Question objected to by Mr. Morgan as not cross-examination and as irrelevant, immaterial, and incompetent.)

A. I was told so.

(Last question repeated.)

A. I did; yes, sir; I am pretty sure I did.

Mr. BALDWIN: I will close the cross-examination here.

(Continued by the examiner, in conformity to the agreement of counsel, to some day to be agreed upon.)

223 SATURDAY, *August 29th*, 1885.

Present: Mr. Morgan, of counsel for complainant; Mr. Baldwin, of counsel for respondent; Judge Rearden, a witness for the complainant.

On account of the non-appearance of the reporter the examination of this witness was continued until Thursday, September 3rd, at 10.30 o'clock a. m.

THURSDAY, *September 3d*, 1885.

Present: Mr. Morgan, of counsel for complainant; Mr. Baldwin, of counsel for respondent.

Mr. MORGAN: I want to call the other side to produce the deed from Florence W. Hays and John J. Hays to J. B. Haggin, of date January, 1877, and also the deed of J. B. Haggin to Joseph De
224 W. Dimmock, of date February 1st, 1877; also the deed from Joseph De W. Dimmock to Isabella C. De Wolfe, of date February 12th, 1877, all of which deeds conveyed the land set forth and described in the complaint herein and referred to in the bill; and also I want the deed from Frank E. and Isabella C. De Wolfe, date March 5th, 1884, conveying all of the lands described in paragraph 3 of the complaint, except section 30.

Mr. BALDWIN: The notice is so extremely short that I am unable to state whether I can produce the originals of more than one of these deeds; I doubt if more than one is in the State; I will make inquiry, and if they are in the State I can undoubtedly get them, and, if so, will produce them at any subsequent time; this morning, as a matter of course, I had no suspicion they were wanted this morning until I came into the room here, and, of course, cannot produce them now; as to the last deed called for it is not at all
225 likely that the deed can be in any other possession than that of Mr. Barnes, the grantee; I have never seen it; he is a resident of Rhode Island, and in all human probability has the deed with him.

Deposition of C. H. Norris.

Examination-in-chief of C. H. NORRIS on behalf of complainant.

Mr. MORGAN:

Q. 1. Where do you reside?

A. At Fowler, Fresno county.

Q. 2. Just state your occupation.

A. Well, at present I am putting my land out in orchards and vineyards and farming other lands in wheat and barley.

Q. 3. You are the owner of lands in the county of Fresno, in this State, are you?

A. I am.

Q. 4. Have you any knowledge of the following lands, situated in Fresno county, in this State: Sections 24, 28, 30, 34, 36, and the south half of section 20, in township 14 S., range 21 E., M. D. base and meridian, and also section 6, T. 15 S., R. 21 E., M. D.
226 base and meridian?

A. I have a general knowledge of the lands; I have been over them.

Q. 5. You have been over the lands?

A. Yes; to a certain extent, you know.

Q. 6. Are you to any extent familiar with the price of lands in the vicinity of the lands mentioned in the preceding question?

A. I know what they are holding lands for around there. I know what some of them have been sold for. I do not know that I can put my finger on a certain place or land that was sold for a certain price, but I know the general price.

Q. 7. From your knowledge of the value of land in that section, what would you fix as a fair valuation of the pieces of land that I have named, per acre?

Mr. BALDWIN: I object to the question as irrelevant and immaterial testimony, and as not tending to prove any of the issues in this case, and on the further general ground that the question
227 is directed to the present value, which can, under no circumstances, be regarded as material in this case.

(Last question repeated.)

A. If we took it in a body; there are some lands that are worth more than others, and my idea is that the land being cut up by ditches and so forth, as it is, it is at least worth $35 per acre.

Q. 8. Are the lands in that section of Fresno county being improved, and have they been so in the last two or three years past?

A. Yes, sir; rapid.

Q. 9. The lands in that immediate section of the country, then, as a fact, are increasing in value per acre?

A. Yes, sir.

Cross-examination by Mr. BALDWIN:

Q. 1. Did you reside in Fresno county as far back as June, 1876?

A. I did.

By agreement of counsel the reading of the above testimony
228 to the witness and the signing of same by him was waived.

Mr. MORGAN: Complainant now introduces in evidence the deed, dated 12 December, 1872, between Frank E. De Wolf and Isabella C. De Wolf, his wife, party of the first part, and Florence W. Hays, wife of John J. Hays, of Oakland, the party of the second part, purporting to convey certain property described in it, being the property described in the bill (marked Complainant's Exhibit "A"). The purpose of the introduction of this deed is to show that the property therein purporting to be conveyed is the property described in the deed; also that the same was conveyed to the party of the second part as separate property.

Mr. BALDWIN: I object to it on the ground that it is irrelevant and immaterial in this case, and on the further ground that it purports on its face to convey a large amount of other property
229 besides that mentioned in the bill here

(Continued, in conformity with the agreement of counsel, to Saturday, the 5th instant, at 10.30 a. m.)

SATURDAY, *September 5th*, 1885.

Present: Ben. Morgan, counsel for complainant; Lloyd Baldwin, counsel for respondent.

Deposition of Timothy H. Rearden.

Examination-in-chief of TIMOTHY H. REARDEN, on behalf of complainant, by Mr. MORGAN:

Q. 1. What is your business?

A. I am an attorney and counsellor at law; I reside at 216 Bush street, San Francisco; at present I am judge of the superior court of the city and county of San Francisco.

Q. 2. Judge, do you know the complainant, Florence W. Hays?

A. I do.

Q. 3. And, if so, how long have you known her?

230 A. I have known her since 1870.

Q. 4. Did you know John J .Hays in his lifetime?

A. I did; I have known him the same length of time.

Q. 5. Do you know the respondent, Frank E. De Wolf; and, if so, how long have you known him?

A. I have no particular acquaintance with Mr. De Wolf; I met him once in 1870, and I met him again in 1876 and 1877 in connection with some business of Mrs. Hays and John J. Hays; that is all the acquaintance I had with him.

Q. 6. Did you know his wife, Isabella C. De Wolf; if so, how long did you know her?

A. I met Isabella C. De Wolf once in 1870, I think, and I met her once in 1876 and 1877; that is all the acquaintance I had with Mrs. De Wolf.

Q. 7. Did you know Joseph De Wolf Dimmock?

A. I do not.

Q. 8. You never saw him?

A. Not that I remember.

231 Q. 9. Did you ever have any business placed in your hands as attorney for John J. Hays and his wife, Florence W. Hays?

A. I don't know that it was as attorney; the business was placed in my hands at the time. Certain business—the business with which I was connected—was being transacted, and there was another attorney in charge of the business; my connection with it was only incidental.

Q. 10. Who was the other attorney, and what part did he take in the business which you speak of?

A. Well, do you wish me to go on and state the facts connected with the business?

Q. 11. No; the action that the other attorney took, so far as you were concerned.

A. The suit was brought by Mrs. Hays against Mrs. De Wolf and, I think, Frank De Wolf. That suit was brought down in Fresno county. There was a motion made to transfer the case to San
232 Mateo county. The motion was denied and an appeal was taken to the supreme court. John J. Hays called upon me at that time and I filed the brief in support of the order of the court below, at his instance, in the supreme court.

Q. 12. About what date was that, Judge?

A. I cannot give the date; it was 1876, I should think.

Q. 13. Now, subsequent to that, what was the business that you did?

A. Perhaps I had better state one or two more facts, and I will state again, the matter came up on the calendar in the supreme court, and Mr. Lloyd Baldwin, here present, appeared for Mr. De Wolf; and the record in the supreme court did not disclose the fact that the demurrer had been filed below. The matter was thereupon continued in order to have that irregularity corrected; and there-
233 upon, on meeting in the court-room, Mr. Baldwin and myself naturally discussed whether a compromise was possible, and from that started the compromise of the transaction or a settlement of the transaction.

Q. 14. Of what transaction?

A. Of the suit.

Q. 15. Of that particular case?

A. Of the suit that was then pending. Well, pending the proceedings another suit was brought, a foreclosure suit was brought, I think, by Haggin against Mrs. Hays; and whether they were both pending at that time or not I cannot say, but in the course of the settlement the Haggin suit was part of the matter.

Q. 16. Do you remember whether you made a proposition of settlement or compromise—whether it came from you to Mr. Baldwin or the other way—from Mr. Baldwin to you?

A. I don't remember that fact. It is possible that I might
234 have invited an offer of compromise from Mr. Baldwin.

Q. 17. Now, subsequent to that time did you have any conversation with Mr. and Mrs. Hays in regard to the compromise?

A. I think I had one or two conversations with Mr. John J. Hays before any interview at all with Mrs. Florence Hays touching the the matter, but ultimately I called upon Mrs. Florence Hays, as she was the party complainant in the action, and she became a party to the discussion.

Q. 18. Where was this discussion of the question that you had with Mr. Hays?

A. Those were conducted in my office.

Q. 19. In this city?

A. In this city.

Q. 20. Now, did you ever have any discussion with him about the matter other than at your office, at any other place; if so, where?

A. I think that I had an interview with him at his own
235 residence, in Redwood City. At that interview, of course, Mrs. Hays was present.

Q. 21. You are certain Mrs. Hays was present at that interview?

A. Oh, I am quite certain; I wouldn't have gone to Redwood City without seeing her.

Q. 22. You knew her interest in the matter?

A. I knew her interest in the matter.

Q. 23 What did you ascertain to be her interest in the entire subject or controversy?

A. She was the party sole in interest; I don't consider that John J. Hays had any interest at all.

Q. 24. You understood that it was her sole and separate property?

A. Her sole and separate property—that is, of course, that was a matter of understanding; I had no special knowledge on the subject, but that was the understanding, that it was her separate property that was involved in the controversy.

Q. 25. Now, how did you understand that—from informa-
236 tion received at that time?

Mr. BALDWIN: I object to it as irrelevant and incompetent to prove the facts it is offered for the purpose of proving.

Q. 26. (Last question repeated.)

A. I cannot say that it was altogether from information received at that time; I had a general understanding of the financial status of both Mr. and Mrs. Hays, and my understanding was that at that time or at any other time any property that might be involved would be Mrs. Florence Hays' property. That information, or that idea, I may say, or that impression, was not conveyed to me alone in those interviews; it was a matter of my knowledge, just as I knew the family.

By Mr. MORGAN:

Q. 27. What was Mr. Hays' physical condition at the time of your interviews about this matter?

A. From what little opportunities of observation that I had with Mr. Hays, he was from 1870 down in very delicate health—
237 liable to die at almost any time—complaining of his lungs, and at the time that this business was conducted he was not strictly an invalid, but he was in very delicate health and disease was fastened upon him at the time.

Q. 28. Can you state which of the parties, Mrs. Florence Hays or Mr. John J. Hays, during the pending of this compromise was, if either of them was, apparently most anxious for the settlement?

(Question objected to by Mr. Baldwin as irrelevant and immaterial.)

A. Well, I had very little conversation with Mrs. Hays touching the matter; all propositions of every kind were formulated by her husband.

Q. 29. Judge, did you know or do you remember whether you inquired into the *bona* fideness of Mr J. B. Haggin's title to the mortgage which he was then foreclosing by suit?

238 (Question objected to by Mr. Baldwin as irrelevant, immaterial, and incompetent.)

A. I made no particular inquiry of the matter. The papers, as soon as they were served in the mortgage suit, were placed in my hands, more perhaps to have some one responsible for the purpose of procuring time or extensions or looking after the matter formally than for any other purpose. I made no particular inquiry into the *bona fide* character of the matter, because I wasn't in position so to do. The only person with whom I had or could have any conversation, except Mr. De Wolf, was Mr. Baldwin, and of course Mr. Baldwin was in duty bound and I did not expect from him any information as to the character of the transaction one way or the other; he very carefully avoided committing himself in any respect.

Q. 30. You mean in regard to the Haggin transaction?

A. In regard to the Haggin transaction, or in regard to the
239 facts, he didn't state anything of the kind; he was very careful in that respect in regard to the interest of his client, and I received no information or hardly a suggestion from him. He was very taciturn on that subject. I think I did suggest to Mr. De Wolf that the Haggin transaction was not of a *bona fide* character—that is, that Mr. De Wolf had not parted with his interest in that mortgage. It was a matter that came into my mind, and he was the only person to whom I could make a suggestion in the matter who knew anything about it. I certainly did not write to Mr. Winchell and make any suggestion. He didn't know anything about the matter.

Q. 31. Did Mr. Hays or Mrs. Hays suggest to you, during that time, that they suspicioned that Haggin was not the owner of that mortgage and that De Wolf was?

A. Well, I don't know that they suggested it to me. It
240 would naturally occur to a lawyer's mind at once that there was a possibility that the mortgage was not in good faith—that is, looking at it from the side of the complainant in the matter of the Hays-De Wolf action, it would naturally suggest itself to the attorney that perhaps this mortgage was transferred not over strictly—I won't say bad faith or anything of that kind—but it was not a perfect transaction in itself that Mr. De Wolf had not parted with his interest in the mortgage.

Q. 32. Did you have occasion, Judge, to examine the defences to the note and mortgage in the light of the ownership still being in De Wolf and wife—whether there were any equities on the part of those parties?

A. You mean assuming that Mr. De Wolf still held that note and mortgage?

Q. 33. Assuming that Mr. De Wolf still held that note and mortgage.

A. That that suit was pending?

Q. 34. Yes?

241 A. I considered that whole question at that time.

Q. 35. Did they state to you, either Mrs. Hays or Mr. Hays, that they had defenses to that note and mortgage if it were the property of De Wolf?

A. They stated a number of facts which, if proved, might possibly be defenses to that note and mortgage.

Q. 36. But in the hands of Mr. Haggin would not be defenses?

A. If the mortgage were transferred to Mr. Haggin in good faith for value without notice of their equities it is possible that so far as Mr. Haggin is concerned those would not be defenses.

Q. 37. Judge, the note and mortgage in that compromise or settlement was the chief item, was it not—the largest item?

(Question objected to as leading.)

A. Well, the note and mortgage was a large item; probably the largest in the settlement. There were some small matters
242 besides, but it was the note and mortgage that was the principal matter involved. I cannot exactly state the particulars of the settlement, because it is a great many years, but the note and mortgage was the troublesome matter.

Q. 38. Do you know, Judge, or do you remember, whether it came to your knowledge at that time, from either the complainant, Mrs. Florence W. Hays, or John J. Hays, that Mr. J. B. Haggin owned large interests in Fresno county—landed interests?

A. Well, we assumed—I don't know who suggested it first—but we assumed Mr. Haggin's well-known position touching all property in that section of the county. We assumed that he was a prince in the matter of land down there and of great weight in everything connected with Fresno county. I don't know, Mr. Morgan, that I have stated—perhaps my testimony will show it—that all the
243 information or suggestions I had was from parties connected with the suit. The only person outside of the suit with whom I had any conversation at all touching Fresno lands was Mr. W. S. Chapman. I went to Mr. W. S. Chapman about the matter and made some inquiries of him in a friendly way about the character and nature of the lands in Fresno county.

Q. 39. Did you understand at that time that Mr. Lloyd Baldwin controlled the Haggin judgment in the settlement?

A. No; I did not; I don't know that the question came up at all in the course of the settlement that Mr. Baldwin controlled that. As I said before, Mr. Baldwin did not assume to do anything that was not exactly required from him at the moment, but in discussing the settlement I did refer the matter to Mr. De Wolf personally, in Mr. Baldwin's office or in my own office; I don't know which.

Q. 40. Well, you knew no one else in the settlement and
244 consulted with no one else on the opposite side except Mr. De Wolf and Mr. Baldwin?

A. Oh, I knew no one else; I saw no one else; I don't know whether to get time I might not have sent to the actual attorney whose name was at the bottom of the complaint, but my impression is I went to Mr. Baldwin about everything, as far as the formalities

were concerned: I believe I got time in the course of the suit once, and it is in my mind that perhaps I sent to Haggin's office—to Haggin's attorney—but I don't know that I did.

Q. 41. Judge, do you remember if it be the fact what, if any, reasons Mr. Hays gave you for wanting to settle?

(Question objected to by Mr. Baldwin as irrelevant and immaterial and having no bearing on the issues in the case.)

245 A. Well, it is hard for me to remember exactly everything that Mr. Hays said at the time. The substance of his representations was that he and Mrs. Florence Hays, financially, would be run into a pretty close corner by these different combinations; that they were practically without means to carry on any extensive litigation, which seemed to be opening up; and his health was bad, and he did not want to risk his labor and time on the great uncertainties of this business. Practically the great point with him seemed to be his utter inability to control means, as the matter stood, to carry on a litigation. The matter was suggested to me that here was a suit in Fresno county and liable to be transferred to San Mateo county; if the allegations were to be supported by proof at all, or the complaint, they would have to be supported by a swarm of witnesses, whose attendance on the court would be expensive.

246 All the items of litigation would be large and expensive, and a great weight upon him. It would be years before it would be finally settled, and Mr. Wolf was a man of means and position, financially, and Mr. Haggin was, as I say, almost an autocrat in that southern country; and these matters frightened Mr. Hays; and I must say, so far as that was concerned, all those items stood out strongly before me—the expenses of the suit.

Q. 42. Do you remember suggesting those matters of the expenses of the suit?

A. I carefully suggested all those matters to Mr Hays as to the expenses of the litigation—the different items—and I intimated, I think, as one point in it that a mere suit in the district court would possibly cost him all the way from $1,500 to $2,500. I suggested that—the fact of that immediate expense to him, in connection with the litigation.

247 Q. 43. When you first went to Redwood and saw Mr. Hays, what was at that time his physical condition; what evidences did he give of physical weakness to you?

A. Well, I don't know; I wouldn't like to go into that matter so as to discuss his exact state of mind; I don't want to do that.

Q. 44. I know, but just as you observed it physically?

A. He had no interview either *or* in the city or the country with me, but Mr. Hays, without any discussion or conversation with me—that he did not cry; he cried every time; he was as bad as a woman in that matter; that is evidence. Whatever a medical man might say, that was evidence of the physical weakness. He burst into tears at my first interview. I had not talked to him any more than three minutes when he burst into crying, and it was that that probably made me take hold of the business in any way when I knew

there was another attorney perfectly competent to manage it
248 at the other end; I did not like to show myself uns-mpathetic in the matter.

Cross-examination by Mr. BALDWIN:

Q. 1. There was no disagreement between you and Judge Winchell; you were in accord with Mr. Winchell, weren't you?

A. I had no communication with him except through Mr. John Hays. I had no direct communication with Mr. Winchell until after the settlement.

Q. 2. Did you not understand that he knew of your employment here and was entirely satisfied, so far as he was concerned?

A. The fact was conveyed to me that, I think, when the case was coming on the calendar he would be unable to attend to it, and that it would be necessary to get some San Francisco attorney to go in and appear, and that was the way that Mr. Hays applied to me to attend to that motion for a change of venue.

249 Q. 3. Did you feel at the time you were interfering with Mr. Winchell's business?

A. Oh, I did not feel I was interfering with Mr. Winchell's business.

Q. 4. And had no reason to suppose that at all?

A. I had no reason to suppose that at all.

Q. 5. You spoke in one part of your testimony, when you was speaking of Mr. Haggin's suit, you said that you had a suspicion that the mortgage was not in good faith?

A. The transfer—the assignment of the mortgage.

Q. 6. The transfer of the mortgage was not in good faith?

A. I would not like to use the word bad faith about the transaction, because that, perhaps, would not be very delicate. I simply say that it was my impression that there was some purpose other than mere sale of the mortgage in transferring it to Mr. Haggin.

250 Q. 7. Do you recollect the occasion when Mrs. Hays, Mr. De Wolfe, you, and myself met to talk this matter over?

A. Very well.

Q. 8. Do you recollect that one of the things to be performed, on our part I would say, was the settlement of a claim that Mr. Brown had—Mr. Brown, of the Bank of California—against the Hays'?

A. That was one of the facts of the matter. I do not know that Mr. Brown had the claim, but it was lodged in the Bank of California. I do not know who was the owner of it.

Q. 9. Do you recollect how much was paid to Mr. Winchell, the Fresno attorney, as a part of the adjustment?

Question objected to as incompetent, irrelevant, and immaterial, as not cross-examination and as not the best evidence.

A. Yes; a few hundred dollars; I think he was paid $200,
251 but I am not sure.

Q. 10. Do you recollect how much was also paid to the Hays' on the last and final adjustment of it—what was the amount?

(The same objection as stated to the last preceding question.)

A. You mean the final item of settlement?

Q. 12. Yes, sir.

(Same objection renewed.)

A. The only final item I remember was an item of settlement as to certain personal property upon the ranch; that was the last item of the settlement. The last actual item of the settlement for that amount of $300 was paid, and the check was transferred through my hands to Mrs. Hays. I think it is $300; I do not remember. I cannot give you the figures about the other portion of the settlement. The note was turned over to Mr. and Mrs. Hays. I think I sent the papers down or directed them to Mr. Hays. The face of it
252 might be $10,000, or something like that. The California Bank matter was paid, and my impression is that that was transferred with the papers. I don't remember the particulars, but I think I gave Mr. Baldwin a receipt on their being passed over and the transaction closed. I gave Mr. Baldwin a receipt for the documents; I am not sure, but I think I did.

Q. 13. Do you recollect that the deed from Mrs. Hays, made contemporaneously with the discharge of the mortgage, was made to J. B. Haggin?

(Question objected to as not the best evidence and as not cross-examination.)

A. I cannot remember the exact status of the papers. It is possible that the deed went to Mr. Haggin, but I could not say that it did of my own remembrance.

Q. 14. State, if you recollect, how long it was from the first
253 meeting of Mrs. Hays, Mr. De Wolfe, you, and myself, at your rooms, before the matter was finally adjusted and the exchange of the papers that you have mentioned.

A. I cannot exactly state; it might be from two to four, perhaps five weeks.

(Continued in accordance with the agreement of counsel, subject to agreement of notice.)

T. H. REARDEN.

MONDAY, *November 30th*, 1885.

Present: Mr. Morgan, of counsel for complainant, Mr. Gorham, of counsel for respondent.

It is stipulated and agreed by and between counsel for the respective parties that the depositions of the witnesses on behalf of the respondent herein may be taken down in short-hand and tran-
254 scribed by A. L. Coombs upon the same terms and conditions as set forth in the stipulation made before taking the depositions of complainant's witnesses by Mr. O'Connor.

Deposition of Edw'd B. Perrin.

Examination-in-chief of EDWARD B. PERRIN, on behalf of respondent, by Mr. GORHAM:

Q. 1. State your name, age, place of residence, and occupation.

A. My name is Edward B. Perrin; my age, forty-six years; I live in San Francisco, and my occupation—I am engaged in land, cattle, and sheep and other business, but that is my principal business.

Q. 2. Were you in 1877 acquainted with the following-described lands situated in Fresno county: Sections twenty-four, twenty-eight, thirty-four, thirty-six, and the south half of section twenty, and in township fourteen south, of range twenty-one east, Mount
255 Diablo base and meridian; also section six, township fifteen south, range twenty-one east, being the lands in controversy in this case and described in the bill?

A. I am.

Q. 3. Are you acquainted with the value of those lands at that time?

A. Was that in 1877?

Q. 4. Yes, sir; in 1877.

A. Yes, sir.

Q. 5. What was the value of those lands per acre in 1877?

Objected to on the ground that it is irrelevant, immaterial, and incompetent under the bill and answer in this case, as there is no question raised as to the value of the lands in the year 1877.

A. I would answer that question by stating that I have since sold, for the estate of an uncle, Phillip Burt, sections ten and fourteen, in township fifteen, range twenty-one, near these lands—one of
256 these sections is in the same township and range—at about five dollars an acre. These lands are very much alike in value, character, and every condition. Then, further, I would state that since that date I have purchased lands in township fifteen, range twenty-one, from the Republic Life Insurance Company at about two dollars per acre—lands very much like those referred to in the question—and afterwards sold the same to C. K. Kirby for four dollars and three-quarters an acre, some of these lands not being two miles distant from the lands in controversy.

Counsel for complainant moved to strike out the answer of the witness on the ground that it was not responsive to the question.

Q. 6. What was the value of those lands per acre in 1877?

A. I should say about five dollars per acre.

257 Q. 7. You were dealing in lands in Fresno county in that immediate vicinity, were you not, at that time?

A. No, sir.

Q. 8. And you were generally familiar with the value of lands in that vicinity?

A. I was.

Q. 9. At that time had irrigation been introduced to any extent at that place?

Objected to on the ground that it is not responsive to any issue in the case.

A. Not anything like to the extent it has been since irrigation has been commenced, but the great value that has been added to lands since in that vicinity had not occurred at that time.

Q. 10. These lands in controversy were not irrigated at that time, were they?

A. No, sir. Well, there may have been a few acres—forty or sixty—but comparatively little. For that matter, there is but little yet.

258 Q. 11. Did De Wolf ever offer to dispose of this land in controversy to you?

Objected to on the ground that it is incompetent, irrelevant, and immaterial.

A. He did.

Q. 12. Will you state the circumstances under which the offer was made?

(Objected to on the ground that it is irrelevant, immaterial, and incompetent and not responsive to any issue raised in this case.)

A. Just previous or some time before he left for Europe.

Q. 13. (Int'g.) In what year?

A. I couldn't state exactly the year, but I can give you the circumstances that happened.

Q. 14. It was since 1877, was it not?

A. Yes, sir; it was since Mrs. De Wolf had some trouble about Mrs. Hays—about this same land. It was since——

Q. 15. Was it prior to 1880?

259 A. Yes, sir; it was prior to 1880. Mr. De Wolf himself was discouraged at the future values at that time of Fresno lands, and he asked me to exchange with him for a piece of land on West Folsom street, between Twenty-first and Twenty-second streets, in the city, for his property down there.

Q. 16. For these very lands?

A. For these very lands, which property on Folsom street I valued then at thirteen thousand dollars, but has since been sold for about seventy-five hundred. I thought it would probably be a good exchange, but my brother objected to the exchange, saying that if Fresno lands were worth anything we had enough; but if not, we had too much.

Q. 17. At what rate would that have been per acre?

A. It would have been four dollars per acre, if I remember right.

260 Cross-examination of EDWARD B. PERRIN by Mr. MORGAN:

Q. 1. These Fresno lands have been increasing in value every year since that time, have they not?

A. I will simply give you these facts in answer to that, which will form an estimate.

Q. 2. These Fresno lands have been increasing in value every year since 1877, have they not?

A. I don't think there was much improvement in value until about 1879. I bought lands there at two dollars and two dollars and a quarter per acre. I have bought since 1877, I think it was about up to 1880, from the San Francisco Savings Union twelve thousand acres at two dollars and a half per acre, or maybe it was the Republic Life Insurance Company. I bought from the Republic Life Insurance Company and from the San Francisco Sav-
261 ings Union altogether about twenty-two thousand acres of land, at from two dollars to two dollars and a quarter per acre, since 1877, some of which lands sold since that buying at four dollars and seventy-five cents per acre. I understand that some of those lands, since 1882, have sold for thirty and thirty-five dollars per acre. The rise in value, however, principally occurred since about 1881.

Q. 3. What were the transactions between you and the San Francisco Savings Union and the Chicago Republic Insurance Company; was it not a mortgage?

A. No, sir; the Chicago Republic Insurance Company had advanced to Mr. Tullock a loan of about three dollars and a half an acre and had foreclosed the mortgage on Mr. Tullock and after that held the land; they foreclosed about 1876; they held the land
262 several years, and then sold it to me for not quite two dollars per acre.

Q. 4. Was it a foreign or domestic company?

A. I could not say about that; they had a board of directors here; Mr. Boyd, Mr. Latham, and myself were on the board of directors. I think the San Francisco Savings Union had loaned to John W. Pierson. I think his indebtedness to them, about 1875, was something like five dollars per acre; they had foreclosed the mortgage, and after holding the land for some time offered it to me at two and a quarter dollars per acre, which I bought.

Q. 5. Those are the two transactions?

A. I can go on and add others.

Q. 6. Those are the two you spoke of?

A. Yes, sir; but I can go on giving you, if you desire it, the cheap prices for land which prevailed from about 1875 to something like 1880, and about the great increase in value since. There was
263 one more transaction. There was half a section of land purchased by some parties here in the city from the estate of Henry Robinson. There was some of the property I advised him to buy, and I think he bought it at about two dollars an acre—a half section near the town of Fresno. It was afterwards sold here to parties here in the city for a thousand dollars, after his death; that was about three dollars and thirty cents per acre. The parties buying the land added a water right to it, which made the price of fifty dollars per acre on it, and some of the land has been since sold for two hundred dollars per acre, and couldn't be bought for that now.

Q. 7. In 1877 how did you determine on the value of land about where this land was?

A. I was buying and selling lands there. I bought and sold there

something like eighty thousand acres of land. Among other
264 pieces of land I bought there, there was another tract of land of about ten thousand acres I bought from Mr. Coddington, for which I paid him one dollar and thirty-five cents an acre, and sold it for one dollar and seventy-five cents per acre, if I recollect right. I made a great deal of money there. I think I have sold forty thousand acres of land, which, if I could pay the people back ten per cent. on their money and get the land back now, I think I should have six hundred thousand dollars more than I have now.

Q. 8. There is an inducement for people who own land in Fresno county to hold on to it—that is, it is rising in value?

A. Yes, sir; I bought some land from Mr. Henry Campbell, the lawyer for the San Francisco Saving Union, for three dollars and a quarter an acre—three hundred and twenty acres—I think about 1879. I think I could sell it now for a thousand dollars an acre.

Q. 9. You have been a friend of De Wolf all the time?

265 A. Yes, sir.

Q. 10. How long have you known him?

A. I sold him this piece of land.

Q. 11. Have you known him during all the time of your transactions in Fresno county—had conversations with him?

A. Yes, sir; a great many conversations with him.

Q. 12. He has frequently consulted with you as to the value of the lands, has he not?

A. Yes, sir.

Q. 13. And you have always advised him?

A. He wrote to me once that he had been offered for one section of this land twenty dollars per acre from Mr. Briggs, and he wrote to me to know whether he should take it, and I wrote to him in Europe to take the twenty dollars.

Q. 14. What year was that?

A. It was since 1880.

Q. 15. That was Mr. Briggs?

A. G. G. Briggs. Mr. De Wolf thought twenty dollars was
266 a large price, and so did I. It seems that Briggs made an offer of thirty dollars per acre since this rise came on. Mr. De Wolf came out and told me he had sold it for thirty dollars an acre; I told him I was rather a bad adviser; I think Mr. Briggs sold some of it for twenty-five dollars per acre.

Q. 16. That was part of this land?

A. Yes, sir; the increase of values on the land has mainly occurred during the last four years; Mr. Hughes bought a large tract of land near the town of Fresno, I think, about four years ago—thirty-two hundred acres—nearer the town than Mr. De Wolf's land, at about seven dollars and a half per acre; I think it was about four years ago; maybe it was four and a half years; some of that land has since sold for two hundred dollars per acre.

Q. 17. Your opinion now of Fresno lands is very good?

A. Yes, sir.

267 Q. 18. What is the land described in this complaint worth to-day?

A. I should think it ought to be worth, anyhow, twenty-five dollars an acre. Some of this land is further back from the railway than other parts; of course, land nearer the railway is more valuable.

Q. 19. You think it would average how much?

A. I should think twenty-five dollars.

Q. 20. That would be a safe investment on it?

A. I should think so.

Q. 21. Some of this land is worth a great deal more than twenty-five dollars, is it not?

A. That land nearer the railway I should think would sell for a great deal more. I was not far from this land about eighteen months ago. At Fowler's switch station there was a piece of land Mr. Lloyd Tevis sold to me for one dollar and a half per acre about 1870 or about 1871 or 1872—about 1873, I think it was; I
268 can't remember exact dates—and I don't think you could buy that land to-day (it is, of course, where the depot is) at less than one thousand dollars an acre. I have been instrumental in selling some of this land at five dollars an acre near this land. I happened to be at Fowler's switch station one day and was talking with Mr. Gentry, and was joking with him about selling out, and was talking with him ironically about the land being bad, and he told a story about a man in San Francisco named Perrin who had been fool enough to sell land there for five dollars an acre that a man had since sold for forty dollars an acre; that was Mr. Edmonds, I think.

By agreement of counsel the reading of the above deposition to the witness and the signing of the same by him were waived.

Respondent introduced in evidence a certified copy of the
269 judgment roll in the case of Florence W. Hays, respondent, *vs.* Isabella C. De Wolf *et al.*, in the supreme court of the State of California, on bill for 13th district court, marked "Respondent's Exhibit Judgment Roll."

Respondent stated that the object of the introduction of the judgment roll was, among other things, for the purpose of showing that in 1876 Florence W. Hays, complainant, swore that the actual value of this land in controversy was at that time in the neighborhood of two dollars and a half per acre, and that she in that suit was endeavoring to have set aside the transaction which she is now trying to get the benefit of in this suit.

Objected to on the ground that it is irrelevant, incompetent, and immaterial, and not among the issues to be tried in this case.

270 Respondent also introduced in evidence a release of all demands of John J. Hays and Florence W. Hays to Frank E. De Wolf and Isabella C. De Wolf, dated January 16, 1877, marked Respondent's Exhibit Release.

Objected to on the ground that it is irrelevant, incompetent, and immaterial and not among the issues to be tried in this case.

Deposition of Butler B. Miner.

Examination-in-chief of BUTLER B. MINER, on behalf of the respondent, by Mr. GORHAM:

Q. 1. What is your name, age, occupation, and place of residence?

A. My name is Butler B. Miner; my age is forty-one years; I reside in San Francisco, and my occupation is railroad secretary; that has been my last occupation—secretary of the railroad company.

Q. 2. Are you acquainted with the lands described in the
271 bill?

A. I have a general knowledge of lands in that immediate vicinity. I am familiar with the adjoining lands. I have been over some of those sections that you mentioned.

Q. 3. All of the lands in that vicinity are of the same general character?

A. Yes, sir; very little difference, if any.

Q. 4. Are you acquainted with the value of those lands in 1877?

Objected to on the ground that it is irrelevant, incompetent, and immaterial, and addresses itself to no issue in the case.

A. I was acquainted at that time with the value of lands in that vicinity—that is, the Kirby tract and the Burt tract. I was particularly well acquainted with the Burt tract. I drew a will for Mr. Burt and knew what the lands were sold for afterwards; had
272 land in 21 south and 21 east. That land was sold at about an average of five dollars an acre. It did not differ at all from the character of Mr. De Wolf's land. It was about the same—the same character.

Q. 5. From your knowledge of the land and of the country there, what would you estimate the value of the De Wolf lands to have been in 1877, being the lands described in the bill herein?

Objected to on the ground that it is incompetent, irrelevant, and immaterial, and addresses itself to no issue in the case.

A. From my knowledge of the country and surrounding territory there, from four and a half to five dollars. That was a fair valuation for that. That was a fair price at that time.

273 Cross-examination of BUTLER B. MINER by Mr. MORGAN:

Q. 1. How was your experience of the value of the lands that you described obtained in 1877?

A. I had made frequent—was familiar with the Burt estate; drew Mr. Burt's will and a great many of the deeds conveying his property, and, of course, I was interested in the Burt estate, because my wife was one of the heirs of the estate, and I was anxious, of course, to obtain the best price for her. That was what that land sold for at that time. Then I knew of the sale of the Republic land. I think I drew that deed of the Republic Life Insurance Company to Dr. Perrin.

Q. 2. In 1877 were you engaged in buying and selling lands in Fresno county, in this vicinity, on your own account or for any one else?

A. I was trying to sell the Burt lands in order to realize as
274 much as possible. Lands were very much depressed at that time, but there has been a rise since on account of the irrigation.

Q. 3. The only sale you have made was the Burt sale?

A. I don't know that I have made any sale myself. I said I was trying to sell. I made a great many trips down there.

Q. 4. Had your attention been called particularly to the lands described as involved in this action?

A. No, sir; not particularly.

Q. 5. Are you in a condition or have you no information sufficient to enable you to pass upon the value of the lands involved in this controversy in 1877?

A. Well, I knew the going price at that time. I know what the lands were selling for.

Q. 6. Have you any means of ascertaining and giving us the value of this land in 1877, the land that is in controversy here?

275 A. No, sir; I have not testified that I knew anything about this particular land; really, there ain't much difference between one piece of Fresno land and another; it is all alike, one plain; the value of the land is generally determined down there by the land around it; it is the way they estimate its value.

Q. 7. You say you are unable to give us the value of this land in controversy in 1877?

A. I can give my impression of its then value by what I know of the land down there; of course I never had my attention drawn to this particular piece of land. I was interested in the Burt estate and I knew what that sold for; we couldn't get any more for that.

By agreement of counsel the reading of the above deposition to the witness and the signing of the same by him were waived.

276 Testimony closed.

The reading of their depositions to the witnesses, Mrs. Hays, Haggin, and Kirkpatrick, and the signing of the same by said witnesses, respectively, was waived by stipulation of counsel filed herein December 12th, 1885.

Examiner's Certificate.

I certify that the foregoing depositions were taken at the place stated in the caption to said depositions at the several times set forth in said depositions in my presence and in the presence of counsel for the respective parties to the cause in said caption entitled; that previous to giving his testimony each of the witnesses in said depositions named was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause; that said
277 depositions were, except in so far as they were taken down in writing by the examiner, taken down in shorthand writing

and transcribed by Mr. E. O'Connor and A. L. Coombs, pursuant to stipulation and agreement of counsel; that said depositions, after being so transcribed, were read by, or by me to, the said witnesses and signed by them, respectively, except in those cases where such reading and signing were by agreement of said counsel waived as in said depositions set forth, and that I have retained said depositions for the purpose of delivering the same with my own hand to the court for which they were taken.

Accompanying said depositions and forming part thereof are the several exhibits introduced in connection therewith and referred to and specified thereon.

I further certify that I am not attorney nor of counsel for
278 any of the parties to said cause, nor in any way interested in the event thereof.

In witness thereof I have hereunto set my hand this 10th day of December, A. D. 1885.

S. C. HOUGHTON,
Examiner in Chancery, U. S. Circuit Court, Dist. of Cal.

Endorsed: Depositions. Opened by order of court and refiled January 13th, 1886. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

279 EXHIBIT A.

This indenture, made the twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-two,

Between Frank E. De Wolf and Isabella Colt De Wolf, his wife, both formerly of Bristol, Rhode Island, but now of Oakland, county of Alameda, State of California, the parties of the first part, and Florence W. Hays, wife of John J. Hays, of said Oakland, the party of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of twenty-three thousand four hundred and thirty-five dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, conveyed and confirmed, and by these presents do grant, bargain and sell, convey and confirm unto the said party of the second part and to her heirs and assigns forever all the undivided one-half part of those certain lots, pieces, or parcels of lands situate, lying, and being in the county of Fresno, State of California, and bounded and particularly described as follows, to wit: Sections twenty-four, twenty-eight, thirty, thirty-
four, thirty-six, and the south half of section twenty, all in
280 township fourteen south, range twenty-one east, Mount Diablo base and meridian; and also section six, in township fifteen south, range twenty-one east, Mount Diablo base and meridian; and also the undivided one-half part of all the personal property belonging to us which is now on the property above described or on any part thereof, which personal property consists of seventeen hundred and seventy sheep or thereabouts, two wagons, two horses,

hay, barley, straw, furniture, agricultural tools, seeds, provisions, and lumber;

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above-mentioned premises, and every part and parcel thereof, with the appurten-ces;

To have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns, as her own, sole, and separate property forever.

In witness whereof the said parties of the first part have
281 hereunto set their hands and seals the day and year first above written.

FRANK E. DE WOLF. [SEAL.]
ISABELLA COLT DE WOLF. [SEAL.]

Signed, sealed, and delivered in the presence of—the word "forever" being stricken out before execution—
J. W. SESSIONS.

STATE OF CALIFORNIA, } ss:
County of Alameda, }

On this twelfth day of December, A. D. one thousand eight hundred and seventy-two, before me, John W. Sessions, a notary public in and for said county, duly commissioned and sworn, personally appeared Frank E. De Wolf and Isabella Colt De Wolf, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the individuals described therein and who executed the same, and they and each of them acknowledged to me that they executed the said instrument, each respectively, freely and voluntarily and for the uses and purposes therein mentioned; and I do hereby further certify that the said Isabella Colt De Wolf, wife of the said Frank E. De Wolf, is personally known to me to be the person whose name is subscribed
282 to said instrument as a party thereto, and that she was by me first made acquainted with the contents thereof and thereafter acknowledged to me on examination, separately, apart from, and without the hearing of her said husband, that she executed the same freely and voluntarily for the uses and purposes therein mentioned, without fear or compulsion, or undue influence of her said husband, and that she did not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN W. SESSIONS,
Notary Public.

Endorsed: Deed. Frank E. De Wolf and Isabella Colt De Wolf, his wife, to Florence W. Hays. Dated 12 Dec., 1872. Recorded at the request of agent Wells, Fargo & Co. this 14th day of December, A. D. 1872, at 6 min. past 1 o'clock p. m., in Book I of Deeds, records of Fresno Co., Cal., pp. 28 *et seq.* Harry Dixon, recorder. U. S. C. C't Cal. No. 3695. Complainant's Exhibit A. S. C. H., Ex'r. Opened by order of court & refiled January 13, 1886. L. S. B. Sawyer, clerk.

283 EXHIBIT B.

This indenture, made the sixteenth day of January, one thousand eight hundred and seventy-seven, between John J. Hays and Florence W. Hays, his wife, of Redwood City, San Mateo county, State of California, parties of the first part, and James B. Haggin, of the city and county of San Francisco, State of California, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of twenty-five dollars (and other valuable considerations) gold coin of the United States of America to them in hand paid by the said party of the second part at or before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, conveyed and confirmed, and by these presents do grant, bargain, and sell, convey, and confirm unto the said party of the second part and to his heirs and assigns forever all their undivided one-half of all those certain lots or parcels of land situate, lying, and being in the county of Fresno, State of California, and bounded and particularly described as follows, to wit:

First. The whole of sections twenty-four (24), twenty-eight (28), thirty (30), thirty-four (34), and thirty-six (36), and the south
284 half of section twenty (20), all in township fourteen (14) south, of range twenty-one (21) east.

Second. Section six (6), in township fifteen (15) south, of range twenty-one (21) east.

All of said townships and sections being of the Mt. Diablo base and meridian, and the entire parcels hereby conveyed containing in the aggregate four thousand one hundred and sixty acres of land.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claims, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances:

To have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have
285 hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of—
JOHN J. HAYS. [L. S.]
FLORENCE W. HAYES. [L. S.]

STATE OF CALIFORNIA, }
County of San Mateo, } ss:

On this twenty-fifth day of January, A. D. one thousand eight hundred and seventy-seven, before me, George W. Fox, a notary public in and for said *said* county of San Mateo, personally appeared John J. Hays and Florence W. Hays, his wife, whose names are subscribed to the annexed instrument, known to me to be the same persons described in and who executed the said annexed instrument, who each of them acknowledged to me that they respectively executed the same.

And the said Florence W. Hays, described as a married woman and the wife of the said John J. Hays, upon examination without the hearing of her husband, I made her acquainted with the contents of said instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

286 In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the said county of San Mateo, the day and year in this certificate first above written.

[SEAL.] GEO. W. FOX.
Notary Public.

Endorsed: Deed. John J. Hays and Florence W. Hays to James B. Haggin. Dated January 16th, 1877. Recorded at request of Mess. Dixon and Faymonville, this 31 January, A. D. 1877, at 30 min. past 10 a. m., in Liber "O" of Deeds, records of Fresno Co., Cal., pp. 193 *et seq.* A. M. Clark, recorder, by C. L. Wainwright, deputy.

Recorder's Certificate.

STATE OF CALIFORNIA, }
County of Fresno, } ss:

I, C. L. Wainwright, county recorder in and for said county, do hereby certify the annexed to be a full, true, and correct transcript of the record of an instrument as the same is recorded in my office in Book "O" of Deeds, pages 193 *et seq.*

In testimony whereof I have hereunto set my hand and 287 affixed my official seal on this 23rd day of September, A. D. 1885.

[SEAL.] C. L. WAINWRIGHT, *Recorder,*
By C. KROEGER,
Deputy Recorder.

Endorsed: U. S. C. C't, Cal. No. 3695. Complainant's Exhibit B. S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

13—868

288 EXHIBIT C.

I, James B. Haggin, of the city and county of San Francisco, State of California, for and in consideration of the sum of twenty-five dollars, do hereby grant to Joseph D. W. Dimock, of the city of New York, State of New York, all that real property situated in Fresno county, State of California, bounded and described as follows: An undivided four-fifths (4/5) of an undivided one-half (1/2) of sections twenty-four (24), twenty-eight (28), thirty (30), thirty-four (34), and thirty-six (36), township fourteen (14) south, range twenty-one (21) east, Monte Diablo base and meridian.

Also an undivided four-fifths of an undivided one-half of the south half of section twenty (20), township fourteen (14) south, range twenty-one (21) east, Monte Diablo base and meridian.

Also an undivided four fifths (4/5) of an undivided one-half (1/2) of section six (6), township fifteen (15) south, range twenty-one (21) east, Monte Diablo base and meridian.

Witness my hand this first day of February, A. D. 1877.

J. B. HAGGIN. [SEAL.]

Signed and executed in the presence of—
C. R. GREATHOUSE.

289 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this nineteenth day of February, A. D. eighteen hundred and seventy-seven, before me, E. H. Tharp, a notary public in and for said city and county, personally appeared J. B. Haggin, known to me to be the person whose name is subscribed to the within instrument, and the said J. B. Haggin acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my seal of office, at my office, in the city and county of San Francisco, State of California, the day and year in this certificate first above written.

[SEAL.] E. H. THARP,
Notary Public.

Endorsed: Deed. James B. Haggin to Joseph De W. Dimock. Dated 1st February, 1877. Recorded, at the request of Horace M. Barnes, Esq., this 16th January, A. D. 1882, at 10 min. past 9 a. m., in Book "Y" of Deeds, page 164, *et seq.*, of Fresno county records. A. M. Clark, Co. recorder.

290 *Recorder's Certificate.*

STATE OF CALIFORNIA, }
County of Fresno, } *ss:*

I, C. L. Wainwright, county recorder in and for said county, do hereby certify the annexed to be a full, true, and correct transcript of the record of an instrument as the same is recorded in my office in Book " Y " of Deeds, page 164, *et seq.*

In testimony whereof I have hereunto set my hand and affixed my official seal on this 23rd day of September, A. D. 1885.

[SEAL.] C. L. WAINWRIGHT, *Recorder,*
By C. KROEGER, *Deputy Recorder.*

Endorsed: U. S. C. c't, Cal. No. 3695. Complainant's Exhibit C. S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

291 EXHIBIT D.

This indenture, made the twelfth (12) day of February, one thousand eight hundred and seventy-seven, between Joseph D. W. Dimock, of the city of New York, State of New York, the party of the first part, and Isabella C. De Wolf, of the city & county of San Francisco, State of California, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of twenty-five dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained and sold, conveyed and confirmed, and by these presents does grant, bargain and sell, convey and confirm, unto the said party of the second part and to her heirs and assigns forever all those certain pieces or parcels of land situate, lying, and being in Fresno county, State of California, and more particularly described as follows, viz: Sections twenty-four (24), twenty-six (26), twenty-eight (28), thirty (30), thirty-four (34), thirty-six (36), and the south half of section twenty (20), township fourteen (14) south, range twenty-one (21) east; also section six (6), township fifteen (15) south, range twenty-one (21) east, all in

292 Monte Diablo base & meridian, and containing four thousand eight hundred acres, more or less, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the above-described premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

J. D. W. DIMOCK. [SEAL.]

Signed, sealed, and delivered in presence of—
EDWIN F. COREY, JR.
WM. H. BARNES.

Edward F. Corey, notary public and commissioner for Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Michigan, New Jersey, Pennsylvania, Delaware,
293 Maryland, Virginia, North Carolina, South Carolina, Georgia, Ohio, Kentucky, Illinois, Indiana, Alabama, Louisiana, Mississippi, Texas, Arkansas, Florida, Iowa, Missouri, Tennessee, Wisconsin, California, and Territories; office, 63 Wall St., N. Y. city.

UNITED STATES OF AMERICA.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 12th day of Feb'y, in the year one thousand eight hundred and seventy-seven, before me, the undersigned, Edwin F. Corey, Jr., a commissioner, residing in the city of New York, duly commissioned and qualified, by the executive authority and under the laws of the State of California, to take the acknowledgement of deeds, &c., to be used or recorded therein, personally appeared J. D. W. Dimock, personally known to me to be the person named in and who executed the annexed instrument, and the said J. D. W. Dimock acknowledged to me that he executed the same, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] EDWIN F. COREY, JUN.,
Commissioner for the State of California;
Office, 54 Wall Street, New York.

294 Endorsed: Deed. Joseph D. W. Dimock to Isabella C. De Wolf. Dated Feb. 12th, 1877. Recorded, at request of Wells, Fargo & Co., this 26th May, A. D. 1877, at 20 min. past 8 a. m., in Liber O of Deeds, records of Fresno Co., Cal., pp. 474 & 5. A. M. Clark, recorder, by C. L. Wainwright, deputy.

Recorder's Certificate.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, C. L. Wainwright, county recorder in and for said county, do hereby certify the annexed to be a full, true, and correct transcript of the record of an instrument as the same is recorded in my office in Book "O" of Deeds, pages 474 & 5.

In testimony whereof I have hereunto set my hand and affixed my official seal on this 23rd day of September, A. D. 1885.

[SEAL.] C. L. WAINWRIGHT, *Recorder*,
By C. KROEGER, *Deputy Recorder*.

Endorsed: U. S. C. c't, Cal. No. 3695. Complainant's Exhibit D. S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

295 EXHIBIT E.

This indenture, made the twenty-first day of May, in the year of our Lord one thousand eight hundred and seventy-seven, between Isabella C. De Wolf, wife of F. E. De Wolf, of city and county of San Francisco, State of California, the party of the first part, and Edward Kentish Evans, of the same place, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ten thousand dollars, gold coin of the United States of America, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part and to his heirs and assigns forever all her interest in section thirty (30), township fourteen (14) south, range twenty-one (21) east, Monte Diablo base & meridian, said section of land lying & being in the county of Fresno, State of California, and containing six hundred & forty acres, more or less, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

296 In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

ISABELLA C. DE WOLF. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. W. CHURCHILL.

STATE OF CALIFORNIA, }
County of Santa Clara, } ss:

On this twenty-second day of May, A. D. one thousand eight hundred and seventy-seven, before me, James M. Braly, a notary public in and for the said county of Santa Clara, personally appeared Isabella C. De Wolf, wife of F. E. De Wolf, known to me to be the person whose name is subscribed to the annexed instrument, described as a married woman, and upon examination, without the hearing of her said husband, I made her acquainted with the contents of said

instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the city of San Jose, county of Santa Clara, the day and year in this certificate first above written.

[SEAL.] JAMES M. BRALY,
Notary Public.

297 Endorsed: Deed. Isabella De Wolf to Edward Kentish Evans. Dated 21 May, 1877. Recorded, at the request of Wells, Fargo & Co., this 26th May, 1877, at 25 min. past 8 o'clock a. m., in Book O of Deeds, of Fresno county, page- 476 & 7. A. M. Clark, county recorder, by C. L. Wainwright, deputy.

Recorder's Certificate.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, C. L. Wainwright, county recorder in and for said county, do hereby certify the annexed to be a full, true, and correct transcript of the record of an instrument as the same is recorded in my office in Book "O" of Deeds, pages 476 & 7.

In testimony whereof I have hereunto set my hand and affixed my official seal on this 23rd day of September, A. D. 1885.

[SEAL.] C. L. WAINWRIGHT, *Recorder,*
By C. KROEGER, *Deputy Recorder.*

Endorsed: U. S. C. c't, Cal. No. 3695. Complainant's Exhibit E. S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

298 EXHIBIT F.

This indenture, made the eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-eight, between Edward K. Evans, of San Francisco, Cal'a, party of the first part, and S. W. Howland, of San Francisco, party of the second part, *the party of the second part,* witnesseth: That the said party of the first part, for and in consideration of the sum of twenty thousand dollars of the United States of America, to me in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, conveyed and confirmed, and by these presents does grant, bargain and sell, convey and confirm, unto the said party of the second part and to his heirs and assigns forever all that certain lot, piece, or parcel of land situate, lying, and being in the county of Fresno, State of California, and bounded and particularly described as follows, to wit: His interest in section thirty (30), township fourteen (14) south, range twenty-one (21) east, Mount Diablo base and meridian, said section of land lying and being in Fresno county, State of California, and containing six hundred and forty acres, more or less, together

with all and singular the tenements, hereditaments, and
299 appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold all and singular the said premises, together with the appurtenances, unto the said part- of the second part, — heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

EDW. KENTISH EVANS. [L. S.]

Signed, sealed, and delivered in the presence of—
J. H. BLOOD.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this eleventh day of January, in the year A. D. one thousand eight hundred and seventy-eight, before me, J. H. Blood, a notary public in and for said city and county, personally appeared Edward Kentish Evans, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and
300 affixed my official seal the day and year last above written.

[SEAL.] J. H. BLOOD,
Notary Public.

Endorsed: Deed. Edward K. Evans to S. W. Howland. Dated Jan'y 11th, 1878. Recorded, at the request of A. W. Robinson, Esq., this 15th January, A. D. 1878, at 30 min. past 8 a. m. in Book P of Deeds, page 214 & 215, of Fresno county records. A. M. Clark, recorder. Exhibit F.

Recorder's Certificate.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, C. L. Wainwright, county recorder in and for said county, do hereby certify the annexed to be a full, true, and correct transcript of the record of an instrument as the same is recorded in my office in Book "P" of Deeds, pages 214 & 215.

In testimony whereof I have hereunto set my hand and affixed my official seal on this 23rd day of September, A. D. 1885.

[SEAL.] C. L. WAINWRIGHT, *Recorder,*
By C. KROEGER, *Deputy Recorder.*

301 Endorsed: U. S. C. c't, Cal. No. 3695. Complainant's Exhibit F. S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

302 EXHIBIT G.

This indenture, made the fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-eight, between S. W. Howland, of the city and county of San Francisco, State of California, party of the first part, and J. B. Haggin, of said city and county and State, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand dollars in gold coin of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part and to his heirs and assigns forever all that certain lot, piece, or parcel of land situate, lying, and being in the county of Fresno, State of California, and bounded and particularly described as follows, to wit:

All of section number thirty (30), in township fourteen (14) south, range twenty-one (21) east, Mount Diablo base and meridian, and containing six hundred and forty acres, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

303 To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed, and delivered in the presence of—

S. W. HOWLAND. [L. S.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this fifteenth day of April, A. D. one thousand eight hundred and seventy-eight, before me, Sam'l S. Murphy, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared S. W. Howland, known to me to be the person described in and who executed and whose name is subscribed to the within and annexed instrument, and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[L. S.] SAM'L S. MURPHY,
Notary Public.

304 Endorsed: Deed. S. W. Howland to J. B. Haggin. Dated 15 April, 1878. Recorded, at the request of F. E. De Wolf, Esq., this 16th April, 1878, at 5 minutes past 8 a. m., in Book P of Deeds, pages 381 & 382, of Fresno county records. A. M. Clark, recorder.

Recorder's Certificate.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, C. L. Wainwright, county recorder in and for said *said* county, do hereby certify the annexed to be a full, true, and correct transcript of the record of an instrument as the same is recorded in my office in Book "P" of Deeds, pages 381 & 382.

In testimony whereof I have hereunto set my hand and affixed my official seal on this 23rd day of September, A. D. 1885.

[SEAL.] C. L. WAINWRIGHT, *Recorder*,
By C. KROEGER, *Deputy Recorder*.

Endorsed: U. S. C. c't, Cal. No. 3695. Complainant's Exhibit G, S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

305 EXHIBIT H.

This indenture, made the 18th day of April, in the year of our Lord one thousand eight hundred and seventy-eight, between J. B. Haggin, of the city and county of San Francisco, State of California, the party of the first part, and Isabella C. De Wolf, of the same place, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath remised, released, and forever quitclaimed, and by these presents doth remise, release, and forever quitclaim, unto the said party of the second part and to her heirs and assigns all that certain lot, piece, or parcel of land situate, lying, and being in the county of Fresno, State of California, and bounded and particularly described as follows, to wit, the undivided nine-tenths ($\frac{9}{10}$ths) of section thirty (30), township fourteen (14) south, of range twenty-one (21) east, Mount Diablo base and meridian, said section containing six hundred and forty acres (640), more or less—

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining,
306 and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with appurtenances:

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

Signed, sealed, and delivered in presence of—

J. B. HAGGIN. [SEAL.]

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this eighteenth (18th) day of April, in the year one thousand eight hundred and seventy-eight, before me, Eugene H. Tharp, a notary public in and for the said city and county, duly commissioned and sworn, personally appeared S. B. Haggin, known to me to be the person described in, whose name is subscribed to, and who executed the within and annexed instrument, and he duly acknowledged to me that he executed the same.

307 In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] E. H. THARP,
Notary Public.

Endorsed: J. B. Haggin to Isabella C. De Wolf. Deed. Dated 18th April, 1878. Recorded, at the request of Horace M. Barnes, Esq., this 16th January, A. D. 1882, at 10 min. past 9 a. m., in Book "Y" of Deeds, page 166, *et seq.*, of Fresno county records. A. M. Clark, recorder.

Recorder's Certificate.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, C. L. Wainwright, county recorder in and for said county, do hereby certify the annexed to be a full, true, and correct transcript of the record of an instrument as the same is recorded in my office in Book "Y" of Deeds, pages 166, *et seq.*

In testimony whereof I have hereunto set my hand and affixed my official seal on this 23rd day of September, A. D. 1885.

[SEAL.] C. L. WAINWRIGHT, *Recorder,*
By C. KROEGER, *Deputy Recorder.*

308 Endorsed: U. S. C. c't, Cal. No. 3695. Complainant's Exhibit H, S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

309 RESPONDENT'S EXHIBIT RELEASE.

Know all men by these presents that we, John J. Hays and Florence W. Hays, of Redwood City, San Mateo county, State of California, for and in consideration of the sum of five dollars, gold coin of the United States of America, to each of us, severally and respectively, in hand paid by Frank E. De Wolf and Isabella C. De Wolf, of the city and county of San Francisco, State of California, at or before the ensealing and delivery of these presents, the receipt whereof by each and every of us is hereby acknowledged, have remised, released, and forever discharged, and by these presents do, for ourselves and each and every of us, severally and respectively, for himself and for all, each, and every the respective heirs, executors,

administrators, successors, and assigns of us and of each and every of us, severally and respectively, remise, release, and forever discharge, the said Frank E. De Wolf and Isabella C. De Wolf and all, each, and every the heirs, executors, and administrators of them, the said Frank E. De Wolf and Isabella C. De Wolf, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, claims, and demands of any and every nature and description whatsoever, at law or in equity, which we or any of us, severally and respectively or jointly with any
310 other person or persons whomsoever, ever had or now have or which we or any of us, severally and respectively or jointly with any other person or persons whomsoever, or the respective heirs, executors, administrators, successors, or assigns of us and of each and every of us, severally and respectively, or any of them, hereafter can, shall, or may have by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of these presents.

In witness whereof we have hereunto set our respective hands and seals the sixteenth day of January, in the year one thousand eight hundred and seventy-seven.

Sealed and delivered in presence of—

FLORENCE W. HAYS. [SEAL.]
JOHN J. HAYS. [SEAL.]

STATE OF CALIFORNIA, }
County of San Mateo, } ss:

On this twentieth day of January, A. D. one thousand eight hundred and seventy-seven, before me, George W. Fox, a notary public in and for the said county of San Mateo, personally appeared John J. Hays and Florence W. Hays, his wife, whose names are subscribed to the annexed instrument, known to me to be the same persons described in and who executed the said instrument, who each of them acknowledged to me that they, respectively, executed the same.

311 And the said Florence W. Hayes, described as a married woman and the wife of the said John J. Hays, upon examination, without the hearing of her husband, I made her acquainted with the contents of said instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the county of San Mateo, the day and year in this certificate first above written.

[SEAL.] GEO. W. FOX.
Notary Public.

Endorsed: Release of all demands. John J. Hays and Florence W. Hays to Frank E. De Wolf and Isabella C. De Wolf. Dated Jan. 16th, 1877. U. S. C. c't, Cal. No. 3695. Respondent's Exhibit Release, S. C. H., Ex'r. Opened by order of court and refiled January 13, 1886. L. S. B. Sawyer, clerk.

312 RESPONDENT'S EXHIBIT JUDGMENT ROLL.

In the Supreme Court of the State of California. January Term, A. D. 1877.

FLORENCE W. HAYS, Respondent,

vs.

ISABELLA C. DE WOLF and F. E. DE WOLF, Appellants.

On appeal from the district — of 13th judicial district in and for the county of Fresno.

And now comes Lloyd Baldwin, Esq., of counsel for appellants, and moves the court that this appeal be dismissed; and it appearing to the court that said appeal should be dismissed, the case having been settled—

Therefore it is ordered, adjudged, and decreed by the court here that the appeal taken by the appellants from an order against them and in favor of said respondent, entered in the district court of the 13 judicial district in and for the county of Fresno on the 21st day of June, A. D. 1876, in the above-entitled cause be, and the same is hereby, dismissed with costs.

I, D. B. Woolf, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the
313 15th day of March, A. D. 1877, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at office, this 16th day of March, A. D. 1877.

[SEAL.]

D. B. WOOLF, *Clerk*,
By H. P. BUSH, *Deputy*.

(Endorsed:) 873. No. 5289. In the supreme court, State of California. Remittitur. Hays *vs.* De Wolf *et al.*

Clerk's costs	$15
Paid by appellant	15
Paid by respondent	
Total	$15

D. B. Woolf, clerk, by H. B. Bush, deputy. Filed 20th March, 1877. A. M. Clark, clerk.

314 STATE OF CALIFORNIA, *County of Fresno:*

In the District Court, 13th Judicial District.

FLORENCE W. HAYS, Plaintiff,

vs.

ISABELLA C. DE WOLF & F. E. DE WOLF, Defendants.

Florence W. Hays, plaintiff, complains of Isabella C. De Wolf and F. E. De Wolf, defendants, and for cause of action alleges as follows:

That she is, and ever since the year 1862 has been, the lawful wife of John J. Hays, and now resides with him in Fresno county, in the State of California.

That prior to June, 1870, she and her said husband resided in the city of St. Louis, in the State of Missouri, where her husband was engaged in business, and where she had moneys of her own separate estate and belonging to her individually invested in property.

That about the month of June, 1870, her said husband having become sick and unable to attend to business, they removed to California for the benefit of his health, and resided in San Luis
315 Obispo, in Oakland, and in San Mateo county until the year 1875, when they removed to Fresno county, where they have resided ever since; that during all the time from their said arrival in California, to wit, June, 1870, until the lat-er part of the year 1874, the plaintiff's husband was in a sick and feeble condition from dropsy of the lungs, and during most of that period confined to his house by reason of such sickness, and unable to attend to any business requiring physical or mental exertion or inducing fatigue, and frequently during that perio l he was in a low and precarious condition and his life despaired of by his friends and medical advisers.

That while they lived in St. Louis, as above mentioned, the plaintiff's husband at her request had taken the case and management of her aforesaid property and funds, and after they came to California he continued at her request, and so far as his physical and mental condition would permit, to advise and consult with her with regard to their care, management, and disposition, and she relied upon such his counsel and advice and was guided thereby, as the defendants well know.

That the defendant, Isabella C. De Wolf, is a near relative
316 by marriage of this plaintiff, and is the lawful wife of the defendant, F. E. De Wolf, with whom she intermarried before they came to California.

That the defendants came to California in October, 1870, and by reason of the near relationship aforesaid they were invited by the plaintiff and her husband to become inmates of their family in San Luis, Obispo county, which invitation was accepted, and the defendants thereupon resided with the plaintiff's family on terms of cordial friendship and confidential intimacy for the greater part of one year, during which period the defendants manifested and professed much

sympathy for and kindness towards the plaintiff and her husband on account of her husband's continued ill health, and by such manifestations and professions entirely won the confidence and trust of the plaintiff and her husband and became fully acquainted with their financial interests and affairs.

That in October, 1871, and February, 1872, the plaintiff, by advise of her said husband, caused a large part of her separate funds then in St. Louis, to wit, about $13,000.00, to be transmitted to California for investment in this State, of which the defendants had at the time full knowledge.

317 That the plaintiff's husband continued in a low and precarious state of health and was unable to transact any business or do anything for the maintenance of his family and the plaintiff herself was fully occupied by her duties to her husband and to their two children, both of tender age, and was debarred from giving the requisite attention to her business affairs or to the proper investment of her aforesaid separate funds, and the defendants, as they had previously done, continued thereafter and during all the period from that time till the plaintiff and her husband came to Fresno county in the year 1875 to express and manifest great sympathy, regard, and friendship for herself and husband and interest in their pecuniary welfare and thereby continued to possess and retain their entire trust and confidence, so that the plaintiff and her husband, as her adviser, were, by said continuous professions and representations of friendship and sympathy, induced to rely and did rely wholly and implicitly upon the statements, counsel, and advice made and given to them by the defendants in regard to plaintiff's business affairs and especially in regard to the proper, safe, and profitable investment of the plaintiff's separate

318 funds aforesaid in California; all of which was well known to the defendants.

That on the 21st day of June, 1871, the defendant, Isabella C. De Wolf, became the owner of those tracts of land in Fresno county, in the State of California, described as sections 24 and 30, in township 14 south, of range 21 east; also of section 6, in township 15 south, of range 21 east; and on the same day the defendant, F. E. De Wolf, became the owner of the south half of section 20 and the whole of sections 28 and 36, in township 14 south, of range 21 east; and on the 6th day of December, 1871, he became the owner of sections 34, in township 14 south, of range 21 east, all of said townships being of the base and meridian of Mt. Diablo, and said lands containing in the aggregate 4,160 acres; and the defendants had also become the owners of a band of sheep, about 1,800 in number, which they caused to be herded and pastured upon said lands; and in the care, management, and disposition of the defendant, Isabella C. De Wolf's interest in said lands and sheep her husband, the defendant, F. E. De Wolf, during all the times herein mentioned acted as her agent and adviser.

That repeatedly and on many occasions after the plaintiff had caused her separate funds aforesaid to be brought to Califor-

319 nia for investment (of which the defendants had knowledge

as aforesaid), and before the 12th day of December, 1872, the defendants, with the fraudulent intent and purpose of ultimately inducing the plaintiff to invest her said separate funds in purchasing an interest in their above-described lands at a price greatly exceeding their real value, falsely and fraudulently stated and represented to the plaintiff and her husband that said lands were first-class in quality and of extraordinary value, and were capable of yielding, and did yield, large yearly profits to the defendants, both as agricultural and as grazing lands, which false and fraudulent statements were then known by the defendants to be false and fraudulent, and were made for the purpose of deceiving and defrauding the plaintiff.

That in the month of February, 1872, the defendants proposed to the plaintiff that if plaintiff would buy an interest in a certain tract of land in San Luis, Obispo county, where the plaintiff and her husband then resided, the defendants would stock it with sheep and become partners with the plaintiff in the sheep business, representing that great profits could be realized therein by both the
320 plaintiff and defendants, and the plaintiff, confiding in the good faith of the defendants, assented to their said proposal and placed in the defendants' hands $12,591.00 in gold coin, with which defendants purchased for the plaintiff the undivided half of said land in said San Luis, Obispo county, but the defendants did not stock said land with sheep as they had promised to do, nor make any effort to do so.

That about the 2nd day of June, 1872, the defendants, falsely pretending and stating that they were desirous to obtain for the plaintiff a speedy and certain income from her separate funds aforesaid, proposed to her to authorize the defendants to procure a rescission of said — of land and to receive back the purchase-money and to reinvest it for the plaintiff in sheep to be herded and pastured by the defendants on their above-described lands in Fresno county, with defendants' sheep thereupon, and that the plaintiff and defendants should become partners in said sheep business and divide the profits thereof.

And the plaintiff, relying upon the good faith of the defendants, assented to said rescission of sale and to defendants' aforesaid proposals, and said sale was thereupon rescinded; and on about the 1st day of July, 1872, the defendants received from the vendor of
321 said lands the said purchase-money, to wit, $12,591.00 of plaintiff's funds, and promised to reinvest the same for the plaintiff without delay in the purchase of sheep and to cause them to be herded and pastured with defendants' sheep on their said lands in Fresno county in partnership, and to pay over to the plaintiff the income and profits to be derived from her part of the wool of said sheep during the fall season of that year, and the plaintiff placed all trust and confidence in the defendants in regard to their investment of her said funds in the manner aforesaid, all of which the defendants well know.

But the defendants, after receiving the said sum of $12,591.00, did not invest the same or any part thereof in the purchase of sheep nor

make any effort in good faith to do so; but they fraudently continued and continued to keep and detain said funds in their own hands and to use and enjoy the income and profit thereof and to deprive the plaintiff of all benefit from the same; but, to satisfy the mind of the plaintiff and to keep her quiet, they notified her by letter, in August, 1872, that they could not find any sheep suitable to purchase in the hands of outside parties, and that therefore they had sold to the plaintiff the undivided one-half of a band of sheep,
322 1,875 in number, on their said lands in Fresno county, at $3.00 per head in gold coin, and the undivided half of all the other personal property on said lands for $1,202.00 more, the aggregate price being $4,125.00, and that the plaintiff would receive an income upon said investment as soon as the wool of said sheep should be sold, which defendants alleged would be in September or October of that year; and defendants further stated to the plaintiff that she, the plaintiff, was a joint owner and partner with them in said sheep and in the profits to be derived therefrom, and that the defendants would manage and carry on said sheep business for the benefit of all parties and save the plaintiff the trouble of giving it any attention, and the plaintiff, still reposing full confidence in the good faith and honest intentions of the defendants, made no objections to said sale, but permitted it to be confirmed, and also permitted the defendants to continue to keep and hold the remainder of her said separate funds over and above said sum of $4,125.00, to wit, $8,466.00, for further investment for her benefit, but defendants appropriated all the net proceeds of the wool of said sheep to their own use and never paid to the plaintiff any of the profits
323 thereof, and have never paid her any interest for the use of said $12,591.00 or any part thereof while it was in their hands as aforesaid.

And the plaintiff charges, upon information and belief, that all the acts of the defendants above recited done by them in regard to the investment of said sum of $12,591.00, after the same came into their hands, to wit, about the first of July, 1872, were done fraudulently and for the purpose of deceiving the plaintiff and wrongfully depriving her of the use and profits of said money, and to aid in furthering their ultimate fraudulent design of inducing and persuading the plaintiff to buy and pay an exorbitant price for one-half of their lands in Fresno county above described, as is hereinafter set forth.

Plaintiff further avers that in the month of October or November, 1872, and while the defendants still retained in their own hands the aforesaid sum of $12,591.00, as well as the aforesaid sheep and other personal property said by defendants to have been sold to the plaintiff, the defendants fraudulently represented to the plaintiff that said business of wool growing and sheep raising on said rancho in Fresno county could not be carried on advantageously or profitably unless the plaintiff should become the owner of the undivided one-half of said tracts of land in Fresno county, as well as of the
324 undivided half of the sheep and of the other personal property thereupon; and intending to deceive and defraud the

plaintiff and to induce her to buy said undivided half of said land at an exorbitant and unconscionable price the defendants falsely and fraudulently then and there stated and represented to the plaintiff, and to her husband as her adviser, that said lands were first-class lands, in regard to quality, both for agricultural and grazing purposes, and of great value, to wit, of the value of at least ten dollars per acre in gold coin, whereas the said lands were in fact of inferior quality and at that time worth no more than two dollars and a half per acre in gold coin, as defendants well know.

That defendants knew their said statements and representations to the plaintiff were fraudulent and false, and that the plaintiff believed them to be true and correct, and relied upon their accuracy; and defendants made said false and fraudulent statements for the purpose and with the intent to deceive and defraud the plaintiff and to induce her to buy the undivided one-half of their above-described tracts of land in Fresno county upon the terms and conditions hereinafter specified.

325 That the plaintiff and her husband, as her adviser, still had and retained perfect trust and confidence in the defendants and relied implicitly upon their statements and upon their advice and counsel in regard to the quality and value of said lands and in regard to the expediency and advantage to the plaintiff of her investing her separate funds in the purchase of said lands, all of which the defendants well know; that the plaintiff and her husband were then living in Oakland, in Alameda county, in this State, and had never seen said lands, and were unable, by reason of the feeble health of her husband, to visit and examine said lands in person, and, relying upon the aforesaid statements and representations of the defendants, the plaintiff, on the 12th day of December, 1872, was thereby induced to buy, and did buy, from the defendants the undivided one-half of the lands lying in Fresno county and above described, and containing 4,160 acres, at the price of nine dollars and a half per acre in gold coin, the undivided half of seventeen hundred and seventy sheep on said ranch at $3.00 per head in gold coin, and the undivided half of two wagons, two horses, some hay, barley, straw, furniture, agricultural tools, seed, provisions, and lumber on said ranch at

326 $995.00 in gold coin, making an aggregate of twenty-three thousand four hundred and thirty-five dollars in gold coin, for which the plaintiff then and there, being induced to do so by the said statements of the defendants, paid to the defendants in the following manner, to wit: the plaintiff gave up and surrendered to the defendants all her right and interest in the sheep and other personal property upon said ranch which she had acquired by the sale made to her by the defendants in August, 1872, as is hereinbefore set forth, amounting in value, as was stated by defendants, to $4,125.00 in gold coin; and the plaintiff also released and gave up to the defendants the remainder of her separate funds still in the defendants' hands, amounting to the further sum of $8,466.00 in gold coin; and the plaintiff, in further payment for the said lands and at the request of the defendants, and being induced to do so by the

statements of the defendants, then and there procured her husband to make and execute with her their joint promissory note to the defendant, Isabella C. De Wolf, in the words and figures following, to wit:

$10,835.00. OAKLAND, *December twelfth*, 1872.

Four years after date, without grace, for value received, we
327 or either of us promise to pay to Isabella C. De Wolf or order the sum of ten thousand eight hundred and thirty-five dollars, with interest thereon from the date hereof until paid at the rate of ten per cent. per annum, payable semi-annually; and if such interest be not paid, then to be compounded by being added to the principal and becoming a part thereof and bearing thereafter the same rate of interest; or if default be made in the payment of any such interest for the space of twenty days after the same shall become due, then at the option of the holder of this note the whole principal sum to become due and payable, principal and interest payable in gold coin of the United States of America and not otherwise. This note is secured by a mortgage of even date herewith.

JOHN J. HAYES.
FLORENCE W. HAYES.

And the plaintiff also then and there, at the request of the defendant, being induced to do so by the said statements of the defendants, procured her husband to make and execute with her their joint mortgage to the defendant, Isabella C. De Wolf, of the undivided one-half of the said lands to secure the payment of their said promis-
sory note, and the plaintiff then and their delivered the said
328 note and mortgage to the defendant, Isabella C. De Wolf, in full payment of the balance for the lands then purchased, which said mortgage was duly recorded on the 14th day of December, 1872, at pages 502 to 505, inclusive, of Book B of Mortgages, in the county recorder's office of Fresno county aforesaid. And in consideration of her aforesaid payments the defendants then and there executed, acknowledged, and delivered to the plaintiff their joint deed for the undivided half of the above-described real estate in Fresno county, and of the sheep (1,770 head) and other personal property there upon said rancho, which said *and* was duly recorded in the county recorder's office of Fresno county, on the 14th day of December, 1872, in Book I of Deeds, at page 28.

That neither the plaintiff nor her husband had any knowledge of the actual value of the aforesaid lands, nor of the fraud and deception that had been practiced upon her by the defendant as aforesaid till after they came to Fresno county and went to reside upon said lands, in the year 1875.

That the actual value of the undivided half of said lands, 4,160 acres, at the time of said sale was only $5,200.00, instead of being $19,760.00, as the defendants stated it to be; that the actual value
of all the real and personal property described in said deed
329 to the plaintiff was only $8,875.00, instead of $23,435.00, as defendants alleged it to be.

That the plaintiff paid therefor at the time of said sale, as above stated, $12,591.00, and gave the aforesaid note and mortgage made by herself and husband to the defendants, as aforesaid, for $10,835.00 more in gold coin.

Plaintiff avers that said mortgage contains, among other matters and things, a proviso that in case any part of the interest accruing upon said note shall at any time remain unpaid for forty days after the same is due by terms thereof then, at the option of the mortgagees, they may re-enter into the possession of the said lands and commence proceedings according to law for the foreclosure of said mortgage and for the sale of said mortgaged premises for the payment of said note.

That no part of the principal or interest has been paid, and the plaintiff and her husband are exposed to danger of proceedings for foreclosure and to the expense of litigation in defending the same.

Plaintiff avers that she has been damaged by the aforesaid fraudulent statements, representations, and acts of said defendants as follows:

330 First. In the sum of $3,716.00 in gold coin, being the difference between the actual value of all said real and personal property sold to her by the defendants and the sum of $12,590, paid therefor.

Second. In the further sum of $577.00 in gold coin, being the amount of legal interest upon the sum of $12,591.00, fraudulently detained by the defendant from the plaintiff, from July 1, 1872, to December 12, 1872.

Third. In the further sum of $5,000.00, damages resulting to and suffered by the plaintiff from the aforesaid fraudulent statements and acts of the defendants.

The plaintiff therefore asks a judgment and decree of this court adjudging and declaring the aforesaid note and mortgage to be void and of no effect and ordering and requiring the defendants to surrender and deliver up the same to be cancelled, and that a restraining order be made upon the filing of this complaint forbidding and restraining the defendant, Isabella C. De Wolf, from taking any steps to collect the amount specified in said note or to foreclose said mortgage, or to transfer or assign either said note or mortgage to any person or persons, or to re-enter upon said lands till the final determination of this action.

331 And that the plaintiff may have a judgment against the defendants for the aggregate amount of the damages above specified, to wit, $9,293.00 in gold coin of the United States, with interest on each of said sums of $3,716.00 and $577.00 at the rate of ten per cent. per annum from the 12th day of December, 1872, until the day of the rendition of judgment herein, with her costs in this behalf expended, and that said judgment be entered and made payable in gold coin of the United States and not otherwise.

And that plaintiff may have such other, further, and general relief in the premises as belongs to justice and equity and to which she may be entitled.

E. C. WINCHELL,
Attorney for Plaintiff.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

Before me came this day Florence W. Hays, who, being by me duly sworn, *and* depose and say that she is the plaintiff in the above-entitled cause; that she has heard the foregoing complaint read and knows the contents thereof, and that the matters
332 and things therein set forth are true of her own knowledge, except those matters stated on information and belief, and as to those things she believes it to be true.

FLORENCE W. HAYS.

Sworn and subscribed this 27th day of April, 1876.

[SEAL.] A. M. CLARK,
County Clerk, Fresno County, Cal.

(Endorsed:) No. 873. 13th dist. court, Fresno county. Florence Hays *vs.* Isabella De Wolf & F. E. De Wolf, complainants. Filed 5th May, 1876. A. M. Clark, clerk. E. C. Winchell, att'y for pl'ff.

333 In the District Court of the Thirteenth Judicial District of the State of California in and for the County of Fresno.

FLORENCE W. HAYS, Plaintiff,

against

ISABELLA C. DE WOLF & F. E. DE WOLF, Defendants.

Action brought in the district court of the thirteenth judicial district of the State of California in and for the county of Fresno, and the complain*ant* filed in said county of Fresno in the office of the clerk of said district court.

The people of the State of California send greeting to Isabella C. De Wolf and F. E. De Wolf, defendants:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the thirteenth judicial district of the State of California in and for the county of Fresno, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; or, if served out of this county but in this district, within twenty days; otherwise within forty days, or judgment by default will be taken against you according to the prayer of said complaint.

334 The said action is brought to recover the sum of $9,293.00 in gold coin, damages resulting to and suffered by the plaintiff from false and fraudulent statements and representations made to the plaintiff during the year 1872 and prior to the 12th day of December of that year, by the defendants, whereby the plaintiff was induced to buy and did buy from the defendants the undivided half of 4,160 acres of land in Fresno county, in the State of California, at and for the price of $9.50 per acre, when, as it is alleged, said lands were only of the value of $2.50 per acre, and to obtain

a judgment and decree of this court that a certain note and mortgage made by the plaintiff and John J. Hays to the defendant, Isabella C. De Wolf, on the 12th day of December, 1872, for $10,835.00, payable in 4 years after that date, with legal interest, and which mortgage is of record in Fresno county, be declared null and void, and that defendants deliver up the same to be cancelled; and to obtain an order restraining the def'ts from collecting or transferring said note or foreclosing said mortgage or entering upon the mortgaged premises until after the determination of this action; and for general relief and costs.

And you are hereby notified that if you fail to appear and answer the said complaint as above required the said plaintiff will cause your default to be entered according to law, and will ap-
335 ply to the court for the relief demanded.

Given under my hand and the seal of the district court of the thirteenth judicial district of the State of California in and for the county of Fresno this 5th day of May, in the year of our Lord 1876.

[L. S.] A. M. CLERK, *Clerk.*

OFFICE OF THE SHERIFF OF THE COUNTY OF SAN MATEO.

I hereby certify that I received the annexed summons on the 6th day of May, A. D. 1876, and personally served the same on the 6th day of May, A. D. 1876, on the defendant, Isabella C. De Wolf, by delivering to and leaving with her, the said defendant, personally, in the county of San Mateo, State of California, a copy thereof attached to a certified copy of the complaint. I further certify that I served said summons on the defendant, F. E. De Wolf, by delivering to and leaving with him a copy of said summons personally, at said county and State, on the 6th day May, A. D. 1876.

Dated Redwood City, this 8th day of May, A. D. 1876.

JOHN C. EDGAR, *Sheriff.*

336 (Endorsed:) No. 873. In the district court of the thirteenth judicial district, county of Fresno. Florence Hays, plaintiff, against Isabella C. De Wolf & F. E. De Wolf, defendants. Summons. Filed 12th day of May, A. D. 1876. A. M. Clark, clerk. E. C. Winchell, plaintiff's attorney.

337 In the District Court of the Thirteenth Judicial District of the State of California in and for the County of Fresno.

FLORENCE W. HAYS, Pl'ff,

vs.

ISABELLA C. DE WOLF and F. E. DE WOLF, Def'ts.

Now comes the defendants, Isabella C. De Wolf and F. E. De Wolf, and demur to the complaint of plaintiff on file herein, and for grounds of demurrer allege and specify as follows:

I.

That the plaintiff has not legal capacity to sue.

1. Because she is, as alleged in the complaint, a married woman and is not living separate and apart from her husband, but resides with him.

II.

That there is a defect of parties plaintiff.

1. Because the complaint shows that plaintiff is a married woman and that her husband, John J. Hays, has an interest in the subject of the action and in obtaining the relief demanded.

2. Because it appears on the face of the complaint that said John J. Hays is united in interest with said plaintiff.

3. Because the said John J. Hays is not joined as plaintiff to the action.

III.

That there is a misjoinder of parties defendant.

338 1. Because said F. E. De Wolf is joined as defendant with said Isabella C. De Wolf.

2. Because the complaint shows that defendants, F. E. De Wolf and Isabella C. De Wolf, are husband and wife and the action is brought against them jointly.

3. Because it appears upon the face of the complaint that the only relief which could be given against defendant, Isabella C. De Wolf, is purely equitable relief, while the only relief demanded against defendant, F. E. De Wolf, is purely legal relief, namely, damages.

IV.

That several causes of action have been improperly united in the complaint.

1. Because an alleged cause of action for damages has been united with an alleged cause of action for equitable relief.

2. Because two alleged causes of action have been united in the same complaint, which do not affect all the parties to the action.

3. Because two separate alleged causes of action have been so united, and the said alleged causes of action are not separately stated in said complaint.

4. Because the complaint shows that no other than equitable relief could be had against the defendant, Isabella C. De Wolf, and
339 that no other cause of action than damages at law is alleged or claimed against defendant, F. E. De Wolf.

V.

That the complaint is ambiguous and uncertain.

1. Because it appears upon the face thereof that defendants were owners in severalty of portions of the property conveyed to plaintiff, and it does not appear nor is there any means of estimating what portion of the alleged damages is claimed against or ought to be assessed upon each of said defendants, respectively.

VI.

That the complaint is unintelligible.

1. Because it does not appear how the defendant, Isabella C. De Wolf, is or can be held jointly liable with her husband, the said defendant, F. E. De Wolf, in respect to the matters therein complained of.

VII.

That the said complaint does not state facts sufficient to constitute a cause of action.

Wherefore the defendants pray that said complaint may be dismissed, and that they may have judgment against plaintiff for their costs.

LLOYD BALDWIN,
Attorney for Defendants.

Due service of a copy hereof acknowledged this 14th day of June, 1876.

340 E. C. WINCHILL,
Att'y for Pl'ff.

(Endorsed:) 873. 13th dist. court. Florence W. Hays *vs.* Isabella C. De Wolf *et al.* Demurrer to complaint. Filed 14 June, 1876. A. M. Clark, clerk, by C. L. Wainwright, dep'ty.

In the District Court of the 13th Judicial District of the State of California in and for the County of Fresno.

FLORENCE W. HAYS
v.
ISABELLA C. DE WOLF and F. E. DE WOLF. } No. 873.

It appearing to the court that the parties and attorneys in the above-entitled action have by stipulation on file herein *have* stipulated that the same be dismissed, the court doth order, adjudge, and decree that said action be, and the same is hereby, dismissed, and that no further proceedings be had therein; and that,
341 according to said stipulation, neither party recover costs against the other.

Given under my hand this 23d day of February, 1877.

B. CAMPBELL,
District Judge.

(Endorsed:) 873. 13th dist. court, Fresno county, Cal. Florence W. Hays *vs.* F. E. De Wolf *et al.* Judgment of dismissal. Filed 23d Feb., 1877. A. M. Clark, clerk. E. V. 2, p. 110.

(Judgment roll endorsed:) No. 873. 13 district court, county of Fresno. Florence W. Hayes, plaintiff, against Isabella C. De Wolf *et al.*, defendant-. Judgment roll. Filed 23 Feb., 1887. A. M. Clark, clerk, by C. L. Wainwright, deputy clerk.

342 STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, A. C. Williams, county clerk and *ex officio* clerk of the superior court of said county and State, do hereby certify that the foregoing is a full, true, and correct transcript of the original judgment roll in the cause entitled "Florence W. Hays *vs.* Isabella C. De Wolf and F. E. De Wolf" as the same appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office this 26th day of August, 1885.

[SEAL.] A. C. WILLIAMS,
Co. Clerk & ex Officio Clerk of the Superior Court of Fresno Co., Cala.

Endorsed: U. S. C. c't, Cal. No. 3695. Respondent's Exhibit Judgment Roll, S. C. H., Ex'r. Opened by order of court and re-filed January 13, 1886. L. S. B. Sawyer, clerk.

343 *Stipulation as to Testimony.*

In the Circuit Court, United States, 9th Circuit.

FLORENCE W. HAYS *vs.* FRANK E. DE WOLF *et al.*

It is hereby stipulated that the testimony of the following witnesses in the above-entitled case, viz., Florence W. Hays, J. B. Haggin, and Dr. Kirkpatrick, may be returned to the court by the commissioner without being signed by said witnesses.

It is further stipulated that the reading of the same to said witnesses is waived and that said testimony may be read on the trial of said cause with the same effect as though read over to and signed by said witnesses, reserving alone legal objection to the relevancy, competency, and materialty of the same.

Dec. 11, 1885.

BEN. MORGAN,
Sol'r for Comp't.

344 LOUIS T. HAGGIN,
Solicitors for Def'ts.

Endorsed: Filed Dec. 12, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

345 At a stated term, to wit, the February term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room in the city and county of San Francisco, on Thursday, the 13th day of May, in the year of our Lord one thousand eight hundred and eighty-six.

Present: Honorable George M. Sabin, U. S. district judge for the district of Nevada, presiding.

Order Allowing Appeal.

FLORENCE W. HAYS
vs.
FRANK E. DE WOLF *et al.* } No. 3695.

On motion, on behalf of Louis T. Haggin, Esq., solicitor for the respondents, it is ordered that an appeal from the final decree of said circuit court, filed and entered herein on May 5th, 1886,
346 being a day in the February, A. D. 1886, term of said circuit court, be, and the same hereby is, allowed, and that a certified transcript of the pleadings, depositions, stipulations, and proceedings be forthwith transmitted to the Supreme Court of the United States upon the appellant giving a bond in the sum of two thousand dollars for costs and damages.

347 *Bond on Appeal.*

In the Supreme Court of the United States.

FRANK E. DE WOLF, ISABELLA C. DE WOLF, and HORACE M. BARNES, Appellants,
vs.
FLORENCE W. HAYS, Appellee.

Know all men by these presents that we, William Willis and Robert C. Chambers, are held and firmly bound unto Florence W. Hays, said appellee, in the sum of two thousand dollars, lawful money of the United States of America, to be paid to said Florence W. Hays, her executors or administrators:

To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our
348 heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 24th day of May, A. D. 1886.

Whereas the above-named Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, appellants, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered by and filed and entered of record in the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, on the fifth day of May, A. D. 1886, being a day in the February, A. D. 1886, term of said circuit court, in the cause entitled Florence W. Hays, complainant, against Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, respondents:

Now, therefore, the condition of this obligation is such that if the above-named Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes shall prosecute their said appeal to effect and an-
349 swer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

WM. WILLIS. [SEAL.]
ROBERT C. CHAMBERS. [SEAL.]

Sealed and delivered in presence of—

——— ———.

UNITED STATES OF AMERICA, } ss:
District of California, }

William Willis and Robert C. Chambers, being duly sworn, each for himself deposes and says that he is a householder in said district of California and is worth the sum of two thousand dollars over and above all his just debts and liabilities and exclusive of property exempt from execution.

WM. WILLIS.
ROBERT C. CHAMBERS.

Subscribed and sworn to before me this 24 day of May, A. D. 1886.

[SEAL.] HOLLAND SMITH,
Notary Public in and for the City and County of San Francisco, State of California.

350 Endorsed: The form of the within bond and the sufficiency of the sureties thereon are hereby approved. (Signed) Geo. M. Sabin, judge of U. S. circuit court, 9th judicial circuit. Filed May 24, 1886. L. S. B. Sawyer, clerk.

351 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Northern District of California.

FLORENCE W. HAYS
vs.
FRANK E. DE WOLF *et al.* } No. 3695.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America for the northern district of California, do hereby certify the foregoing three hundred and fifty written pages, numbered from 1 to 350, inclusive, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same together constitute the transcript on appeal to the Supreme Court of the United States in said cause.

352 Attest my hand and the seal of said circuit court this 23d day of September, A. D. 1886.

[Seal U. S. Circuit Court, Northern Dist., Cal.]

L. S. B. SAWYER, *Clerk.*

353 UNITED STATES OF AMERICA, *ss:*

To Florence W. Hays, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the eleventh day of October, A. D. 1886, pursuant to an order allowing an appeal from the final decree of the circuit court of the United States of America for the

district of California, in the cause wherein Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes are appellants and you are appellee, to show cause, if any there be, why the said decree in said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable George M. Sabin, judge of the district court of the United States for the district of Nevada, sitting as U. S. circuit judge, this 24th day of May, A. D. 1886, and of the Independence of the United States the one hundred and tenth.

[Seal of the Circuit Court, District of Cala.]

GEO. M. SABIN,
Judge of U. S. District Court, District of Nevada,
Sitting as U. S. Circuit Judge.

354 [Endorsed:] No. 3695. In the Supreme Court of the United States. Frank E. De Wolf *et al.*, appellants, *vs.* Florence W. Hays, appellee. Citation. Filed June 2d, 1886. L. S. B. Sawyer, clerk U. S. circuit court, district of California, by F. D. Monckton, deputy clerk.

Service of a copy of the within citation is hereby acknowledged this 27 day of May, A. D. 1886.

BEN. MORGAN,
Solicitor for Complainant and Appellee.

Endorsed on cover: California C. C. U. S. No. 868. Frank E. De Wolf, Isabella C. De Wolf, and Horace M. Barnes, appellants, *vs.* Florence W. Hays. Filed November 19, 1886.

Supreme Court of the United States

OCTOBER TERM, 1897.

No. 868.

FRANK E. DEWOLF, ISABELLA COE DEWOLF AND HORACE M. BARNES, APPELLANTS,

vs.

FLORENCE W. HAYS.

ARGUMENT ON BEHALF OF THE APPELLANTS.

BENJAMIN P. THURSTON,
LOUIS T. HAGGIN,
Of Counsel.

PROVIDENCE:
E. A. JOHNSON & CO., LAW PRINTERS, 61 WESTMINSTER STREET.
1897.

Supreme Court of the United States.

FRANK E. DEWOLF, ISABELLA COLT DEWOLF AND HORACE M. BARNES, APPELLANTS,

vs.

FLORENCE W. HAYS.

OCTOBER TERM, 1887.

No. 868.

ARGUMENT ON BEHALF OF THE APPELLANTS BY BENJ. F. THURSTON.

This is an appeal from the Circuit Court of the United States for the District of California.

There is no opinion given by the court below stating the grounds upon which the decision of the court was based.

It is impossible to discover in the record of the case any rational ground upon which the decree of the Circuit Court can be justified. It is in conflict with the case made on the face of the bill; it finds no support from any proof in the record of testimony; it ignores a long line of decisions of this court on the presumptions of want of equity in suits upon stale, speculative claims; and it declares a deed of lands made between the defendants to

be a void instrument, without the least attempt on the part of the plaintiff to say that it was fraudulent in character.

Statement of the Case.

The plaintiff, Florence W. Hays, on May 7, 1884, brought her bill of complaint to vacate a deed made March 5, 1884, by the defendants Frank E. and Isabella Colt DeWolf to the third defendant, Horace M. Barnes, of certain lands in Fresno County, California, and for an accounting between herself and the said defendants Frank E. and Isabella Colt DeWolf. The title of the defendant Horace M. Barnes to said lands was derived by mesne conveyances in a direct chain from the plaintiff, Florence W. Hays, who, with her husband, John J. Hays, then living, January 16, 1877, made full conveyance of the same lands to James B. Haggin, of San Francisco. This deed was duly acknowledged by the plaintiff and her husband on the 25th of January, 1877, and she, upon an examination privily and apart from her husband, and upon the contents of the instrument being explained to her by the magistrate, declared that she did not wish to retract the execution of the same. (Record, p. 96, 97, Exhibit B.)

On the same day of the making of the deed the plaintiff and her husband executed, under seal, a release to Frank E. and Isabella Colt DeWolf, in the broadest terms, of all actions or causes of action of every nature whatsoever at law or in equity. (Record, pp. 106, 107,

Respondents' Exhibit Release.) This release also was duly and formally acknowledged. (Record, p. 107.)

It thus appears that a period of more than seven years and three months intervened between the date of the conveyance of the lands to Haggin and the execution of the release to the DeWolfs, and the time of the filing of the present bill.

The bill of complaint alleges that on December 12, 1872, the plaintiff purchased from the defendants, Frank E. and Isabella Colt DeWolf, one undivided half of the lands in question, and that in part payment of the same she gave her promissory note secured by a mortgage upon the lands; that afterwards the defendants, Frank E. and Isabella Colt DeWolf, assigned the said note and mortgage to J. B. Haggin, and that he, at the request of these defendants, commenced an action to foreclose the mortgage, which action, the plaintiff admits, was subsequently dismissed upon the execution and delivery to Haggin of the deed of the plaintiff's interest in said lands. The deed so admitted to have been made is Exhibit B, (Record p. 96,) above referred to.

The bill further charges that Haggin was acting as the agent of Frank E. and Isabella Colt DeWolf, and the several mesne conveyances from Haggin to the defendant, Horace M. Barnes, are then set forth in order, all of which conveyances, it is alleged, were voluntary and without consideration.

The plaintiff alleges that her deed to Haggin dated January 16, 1877, (Record p. 96) was executed "at the urgent solicitation of her husband, John J. Hays, who was at the time an invalid, unable to attend to business,

and who importuned plaintiff to make said deed, urging as a reason that he was unwilling to die and leave her involved in a litigation which might result in her pecuniary ruin, and complainant, yielding to his entreaties and persuasions, consented to, and did make, said deed."

And it is further charged that the defendants, Frank E. and Isabella Colt DeWolf, knew at the time of the execution of said deed "that the same was made by the complainant under the influence of her said husband, and because of his persuasions and solicitation, and was not her free and voluntary act."

The bill admits that the plaintiff is still indebted to the defendants, Frank E. and Isabella Colt DeWolf, for the amount of the mortgage note for $10,835, dated December 12, 1872, and payable four years after date, with interest at the rate of ten per cent. per annum, payable semi-annually, the interest to be compounded if not paid according to the tenor of the note. A copy of this note appears in the record at p. 114.

An offer of payment of this indebtedness is made, accompanied with the allegation that the lands are now of the value of $100,000, and the bill concludes with a prayer for an accounting between herself and Frank E. and Isabella Colt DeWolf, and "that upon payment by her, or tendering the amount found due to them upon such accounting, they be decreed to convey to her by good and sufficient deed the undivided one-half interest in the lands herein described; that the deed made by Frank E. and Isabella Colt DeWolf, of date March 5, 1884" (Deed to Barnes) "as to plaintiff, be declared fraudulent, null and void."

It will be observed that the bill does not pray that the

deed from the plaintiff and her husband to Haggin, dated January 16, 1877, be vacated or be declared to have been executed under duress or undue influence, but the only deed that is sought to be vacated is the one which confessedly the defendants DeWolf had the right to make to the co-defendant Barnes on March 5, 1884, notwithstanding that it was without consideration, provided the deed of Hays to Haggin of January 16, 1877, was a valid instrument.

The defendants, Frank E. and Isabella Colt DeWolf, deny all the allegations of the bill upon which the plaintiff's equity is assumed to be founded, and specifically aver, in answer to the charge that the plaintiff, at the urgent solicitation of her husband, and at his importunity, made the deed to Haggin of January 16, 1877, or that the deed was in fact made in consequence of such entreaties or persuasions, that the deed was executed by the plaintiff formally and voluntarily, and that the same was acknowledged by her upon an examination apart from her husband, and was her free and voluntary act and deed; and all averments as to their knowledge that any influence had been exercised by John J. Hays over his wife are specifically denied.

Denial is also made of the article in the bill of complaint which asserts that the plaintiff is still indebted to them in the amount of the mortgage note and interest, and this part of the answer is to be properly read in connection with the proofs on both sides in the record which establish the fact that on the 16th of January, 1877, a full settlement of all matters in controversy between Hays and wife and the DeWolfs was made, and that, as part of the settlement, the Hays mortgage note was surrendered to

the plaintiff. The defendants also set up and plead in bar of the action the statute of limitations of California.

The defendant Barnes denies all the allegations of the bill of complaint upon information or belief, and leaves the plaintiff to make proof of the same. As to the specific allegation that the deed of March 5, 1884, was made to him by DeWolf and wife for the purpose of covering up or concealing the title of such grantors "the better to cheat or defraud the complainant, or for the purpose of cheating or defrauding complainant, or for any fradulent or wrongful purpose whatever," it is expressly denied. He admits that the conveyance was made to him without consideration, and refers, as to the contents of the deed, to the record of the same in Fresno County.

Shortly stated, the case presented by the pleadings is this: The plaintiff admits that she purchased an undivided half interest in the lands in question, located in Fresno County, on December 12, 1872, (Exhibit A., p. 94) and gave in part consideration for the purchase of the same a promissory note secured by mortgage upon the same lands; that on January 16, 1877, five years after such purchase, Hays and wife made conveyance of all their interest in the lands to James B. Haggin (Record p. 96); that this deed was made because she was solicited to do so by her husband, who was in failing health, the reason assigned by him being, that he was unwilling to die and leave her involved in a litigation which might result in her pecuniary ruin, and that she, yielding to his entreaties and persuasions, consented to make the deed. It is not pretended that any improper or extraordinary influence was brought

to bear upon her to comply with her husband's wishes; it is not pretended that the defendants took any part in an effort to influence her to this act, or that they were privy in any manner whatsoever to the arguments or discussion between herself and her husband. She remained contented with the transaction for a period of seven years, and then brings her bill of complaint, not to vacate her own deed to Haggin of January 16, 1877, nor does she seek to have Barnes, who now holds the title, declared to be a trustee for her, but prays that the deed of the DeWolfs to Barnes, of March 5, 1884, which was unquestionably good *inter partes*, be declared fraudulent and void, and that her original interest in the lands be reconveyed to her after an accounting had between her and the DeWolfs concerning her indebtedness on account of a mortgage deed and interest, and payment of the same by her.

It is very difficult to state intelligibly the theory of the bill. It does not seem to have any clearly defined and consistent purpose. It is the fairest, perhaps, to regard it as a bill to redeem the mortgage of 1872. It would be by no means satirical to say that the scheme of the bill is, that because the plaintiff concurred with her sick husband in his lifetime in settling a family controversy, she should be permitted, six years after his death, to repudiate her act of complaisance. Treating it as a bill to redeem, it is seriously defective in impliedly recognizing the legal validity of the deed from Hays and wife to Haggin, of January 16, 1877, covering the same lands embraced in the mortgage sought to be redeemed, and in not setting forth any sufficient ground upon which that deed can be declared invalid and in not charging DeWolf and wife with any complicity with her husband in his efforts to have his wife

concur with him in the settlement of cross litigations which the court will presently see were then subsisting between the parties. Until the plaintiff can succeed in removing the obstacle created by the deed of herself and her husband to Haggin, acquiesced in by the plaintiff for more than seven years, it will be impossible to secure any foundation for the prayer to be admitted to redeem to rest upon.

Assignment of Errors.

The Circuit Court erred in entering the decree in this case (Record, p. 42).

1. Because the court did not dismiss the bill for the reason that it appears on the face thereof that the plaintiff was guilty of laches in acquiescing from January 16, 1877, in the validity of the deed to Haggin, until May 7, 1884, before any attempt was made by her to redeem the mortgage note received back by her on the occasion of making the Haggin deed of 1877.

2. Because the court did not dismiss the bill on the ground that the presumption of laches, on the part of the plaintiff, arose upon the face of the bill, and no allegations appeared in the bill repelling the effect of such presumption by accounting for the conduct of the plaintiff in acquiescing for so long a period in a transaction to which she was a party, without seeking to impeach the same, and no proof appeared in the record in explanation of such laches, and no testimony tending to show that the defendants, or any of them, aided in any way in influencing her to make

the deed, or that they were cognizant that any influence to that end was brought to bear upon her.

3. Because the court did not dismiss the bill upon the merits of the case as disclosed by the record of testimony and evidence.

4. Because the court did decree that the deed of March 5, 1884, by Frank and Isabella Colt DeWolf to Horace M. Barnes, was null and void, without having first found sufficient evidence in the record to decree that the deed of Hays and wife to Haggin was an invalid instrument and inoperative as against the plaintiff.

5. Because the court did decree that the defendants Frank E. and Isabella Colt DeWolf should make, execute and deliver to the complainant a good and sufficient deed of an undivided half interest in the lands recited in the decree, without also providing, conformably with the plaintiff's bill, that there should be first had an accounting between the parties, and a payment by the complainant of all sums of money which, upon the theory that the deed to Haggin of January 16, 1877, was invalid against the plaintiff, would be due to DeWolf and wife on account of the mortgage note and interest thereon given by Hays and wife on December 12, 1872, as a part consideration of their original purchase.

The Case as it Appears Upon the Record of Testimony and Evidence.

Without repeating the statement of the case from the pleadings, it is only necessary to add, for the full under-

standing of the controversy, the following facts which the record clearly discloses.

Hays and wife and DeWolf and wife were acquaintances, and were connected by marriage. Both parties took up their residence in California in the year 1871. In December, 1872, the defendants DeWolf and wife, being the owners of a considerable tract of land in Frenso County, conveyed one undivided half of the same to the plaintiff for the consideration of $23,435, together with one-half of certain personal property consisting of 1,770 sheep, etc. (Record, Exhibit A, p. 94). On the same day Hays and wife executed a mortgage upon the interest so conveyed as security for the note of $10,835 before referred to. There is no question as to the identity of the lands described in the mortgage with the lands conveyed to the plaintiff. (Mrs. Hays' Cross-Examination, p. 72, Q. 147, 148.) Some three years and a half after this transaction, Mrs. Hays, the plaintiff, commenced an action at law in Fresno County against DeWolf and wife, which was filed in the District Court of the 13th Judicial District of the County of Fresno on May 5, 1876. (Record, pp. 109 to 120.) The gravamen of this suit was that DeWolf and wife sold to her one undivided half of these Fresno lands, band of sheep, and other personal property, upon fraudulent representations as to the value of the same, and praying for a judgment in money damages to the amount of the alleged injury, and also for a decree declaring the note and mortgage for $10,835, part consideration for such purchase, to be void and of no effect, and for other relief. It seems that the note and mortgage, no part of the principal or interest of which had been paid, had been transferred by DeWolf and wife to J. B. Haggin, and he, on November 2, 1876, com-

menced a suit to foreclose the mortgage. (Record, p. 50, Q. 52 to 55). Thus, at this last named date there was on foot cross suits in relation to these Fresno lands. Soon after the commencement of the suit in foreclosure negotiations for a settlement of these mutual controversies were initiated by Hays and wife, were continued by the aid of able counsel upon both sides through several days, as will presently specifically be made to appear, and these negotiations ended in an amicable settlement, the result of which was that Hays and wife made the deed to Haggin of January 16, 1877, received back their mortgage note, and on the same day a full release was given by Hays and wife to Frank E. DeWolf and wife (Record, p. 106) of all claims and demands, actions and causes of action of every kind whatsoever, whether at law or in equity. (J. B. Haggin's Deposition, Record, p. 63, Q. 64 to 68).

During the period which intervened between this mutual settlement of all controversies and disputes in January, 1877, and the time of the commencement of the present suit in May, 1884, the lands in question have greatly increased in value, and hence this proceeding for the purpose of avoiding the settlement of January, 1877, finds its motive.

The Case Utterly Fails to Show any Improper Participation on the Part of DeWolf and Wife in Inducing the Making of the Haggin Deed of January 16, 1877, or of the General Release to Them of the Same Date.

John J. Hays, the husband of the plaintiff, was affected with a pulmonary disease. He came to reside in

California with the plaintiff in May, 1871. He was an invalid at the date of the intermarriage of the plaintiff with him. She says, p. 49,—

> "I married him an invalid, and he had solidification of the left lung, enlargement of the heart, kidney troubles, and I don't know—a complication."

He improved very much in health after arriving in California, but beyond doubt he had an incurable disease, and died in November, 1878, or a little short of two years after the settlement now under discussion was made. (Record, p. 71, Q. 138).

The suit of Hays *vs.* DeWolf and wife, for damages for misrepresentation as to the value of these Fresno lands and ranch business, was coming up for a hearing before the Supreme Court on a motion, and it appears that on this occasion, in the court room, the counsel for the respective parties suggested the advisability of a compromise. (Record, fol. 233.) It is probable that the suggestion of a compromise came from Mr. Rearden, the counsel for Mrs. Hays, (Record, fol. 234) but it is not material which of the counsel originated the suggestion; it is enough for my purpose that the idea of compromising the two controversies between the parties respectively, relating to the transactions which had grown out of their joint ownership of the Fresno lands, was started by intelligent counsel who had only the interest of their respective clients in view. Judge Rearden, counsel for Mrs. Hays, says:

> "I think I had one or two conversations with Mr. John J. Hays before any interview at all with Mrs. Florence Hays touching the matter, but ultimately I called upon Mrs. Florence Hays, as she was the party complainant in the action, and she became a party to the discussion." (Record, fol. 234.)

It is apparent that the counsel for Mrs. Hays did not

consider that there was any very certain defence to the suit to foreclose the mortgage.

> "Q. 35. Did they state to you, either Mrs. Hays or Mr. Hays, that they had defences to that note and mortgage if it were the property of DeWolf?
>
> A. They stated a number of facts which, if proved, might possibly be defences to that note and mortgage." (Record, fol. 241.)

This very moderate statement of the strength of Mrs. Hays' case in resisting the foreclosure suit, equally applies to the suit of Mrs. Hays for damages, on the ground that the land and ranch business was sold to her at too high a price. Her own suit, (See Exhibit Judgment Roll, p. 108) in addition to demanding money damages, asked for a judgment and decree adjudging the note and mortgage to be void, and praying that the same be delivered up to be cancelled.

Further on (p. 84, fol. 245) Mr. Rearden says, speaking of a conversation between himself and Mr. Hays with reference to effecting a settlement of the controversy,—

> "The matter was suggested to me that here was a suit in Fresno county and liable to be transferred to San Mateo county. (This was the suit of Hays *vs.* DeWolf, p. 109.) If the allegations were to be supported by proof at all of the complaint, they would have to be supported by a swarm of witnesses, whose attendance on the court would be expensive. All the items of the litigation would be large and expensive, and a great weight upon him."

Mr. Rearden further says that he carefully suggested the extent of the probable expenses of the litigation, "and I intimated, I think, as one point in it that a mere suit in the District Court would possibly cost him all the way from $1,500 to $2,500. I suggested that—the fact of that

immediate expense to him, in connection with the litigation." (P. 84, fol. 246).

All this consultation between client and counsel respecting the advisability of a settlement of this family quarrel, was made before negotiations were opened with Mr. DeWolf.

Mr. Hays and his wife were then residing at Redwood. As the result of this advice of counsel, Mrs. Hays, the present plaintiff, unattended by her husband, went to San Francisco. (P. 55, fol. 162.) She went directly to Mr. Rearden's office over the Mercantile Library. (Fol. 163.) Here the parties, attended by their respective counsel, had a full conference, which covered a period of fully two consecutive days. (P. 56, Q. 107; p. 73, fol. 213.) The plaintiff's own account clearly shows that the whole business had the character of an ordinary compromise of a controversy between parties under the advice of, and in the presence of, their respective counsel. She says: (P. 57, Q. 120.)

> "I told Mr. DeWolf in the room at that time that I wanted to wipe out the whole thing on account of Mr. Hays.
> Q. 121. Why on account of Mr. Hays?
> A. Because it was his ill-health. I did it because it was a wife's duty—in other words, to do what he told me to do.
> Q. 122. Did you tell Mr. DeWolf that?
> A. Yes, sir; I did."

At an earlier period in giving her deposition in this case (P. 51, fol. 150) she says:

> "There was a suit then pending against DeWolf. That was the first suit, you know. He [Hays] was very much worried about that, and this additional trouble of Mr. Haggin's coming on him made him extremely nervous and seemed to trouble him a great deal, and made him probably iller

than he would necessarily have been; and he told me he knew Mr. DeWolf had a great deal of money to help him out—more than we had—and this additional pressure of Mr. Haggin's, after we had heard that he was unscrupulous, if I must say it, and not knowing the gentleman, and so wealthy, and we had that against us which we were not able to fight against without money or influence."

And again (Fol. 151):

"He asked me if I would feel willing—that he thought the matter over, and asked me if I would feel willing—to give it up and get a clearance, and wipe the whole thing out—get rid of the whole thing, and I think he had talked to Mr. Rearden previously, asking that question on the way up from the ranch."

She adds (p. 52, Q. 62):

"Of course I hated very much to do it if there was the shadow of a hope for success, as it had gone as far as it had, and everything in our favor. I thought it was too bad to give it up, but still he seemed so weak and miserable and pleading, so that I finally told him I would do just what he desired me to do.

Q. 65. What was that business transaction between you at that time; was that the settlement of the Haggin suit?

A. To wipe out the whole thing—the DeWolf suit and the Haggin suit and everything, if we could just get out of it and not continue in it at all. We would have continued it—all hazards—only for this Haggin business coming down on us. It frightened my husband and frightened me, and I did not see there was any prospect, any way of getting out of such strong power as they presented at that time."

The court will observe that the whole of the Haggin matter consisted in bringing the suit for the foreclosure of the mortgage, which in the bill in this case is stated to be a valid claim. The plaintiff seeks to magnify too much the influence of this foreclosure suit upon her own mind in making the settlement. The simple fact is, as we gather from the record, that she had seen fit to bring an

action against DeWolf based on the claim that the land and other property which she had purchased was not worth what she had been induced to pay for it, involving necessarily charges of unfair conduct against DeWolf in a transaction between himself and a family connection. Such suits in families are not peacemakers, and DeWolf very properly retorted by causing suit to be brought for a foreclosure of the mortgage, which confessedly was due, and upon which nothing has been paid, either on account of the principal or interest. Although there were two cross-actions, the controversy in both cases was substantially the same. The evidence to support the suit of Mrs. Hays would be the same that she would introduce to resist the suit for the foreclosure of the mortgage.

Turning now to the occasion of the conference at Judge Rearden's rooms, the plaintiff says that she met Mr DeWolf "at Mr. Rearden's rooms, and he went out to get Mr. Baldwin. I think that must have been the way, but I cannot swear to that, because I do not quite remember, and then we talked about making some kind of compromise."

> "Q. 101. By 'we' whom do you mean?
> A. I mean Mr. Baldwin and Mr. DeWolf and Mr. Rearden and myself—at least they consulted me. They did the talking, and then Mr. Rearden came in and consulted with me." (P. 55, fol. 163.)

Other items beside the mortgage debt were involved in the settlement. Mrs. Hays says (p. 73, Q. 155):

> "I remember distinctly, when we went out of that room, that I said under no condition would I compromise unless on certain conditions, and that condition was that Mr. Brown should be paid in full, I suppose at the time, and Mr. Winchell should be paid for his services. Mr. Brown had a note without any security at all, of $1000 against me, which I must pay, and I supposed all the time that it was paid until

I heard afterwards from Mr. Rearden that it was only fifty cents on the dollar, which mortified me very much indeed, and I felt very bad about it."

The Mr. Winchell referred to was the attorney for Mrs. Hays in the suit against DeWolf. (Exhibit Judgment Roll, p. 109.)

On this same subject Judge Rearden, her counsel, says: (P. 83, fol. 242.)

"Well, the note and mortgage was a large item; probably the largest in the settlement. There were some small matters beside, but it was the note and mortgage that was the principal matter involved. I cannot exactly state the particulars of the settlement, because it is a great many years, but the note and mortgage was the troublesome matter."

And further states (P. 85, Ans. to Q. 8) that the settlement of the claim of Mr. Brown against Mrs. Hays was one of the items embraced among the things that DeWolf was to take care of; also, that Mr. Winchell was to be paid for his services as attorney. He is then asked (Q. 10, p. 85.):

"Do you recollect how much was also paid to the Hays on the last and final adjustment of it—what was the amount?

A. (P. 86) The only final item I remember was an item of settlement as to certain personal property upon the ranch; that was the last item of the settlement. The last actual item of the settlement for that amount of $300 was paid, and the check was transferred through my hands to Mrs Hays. I think it is $300; I do not remember. I cannot give you the figures about the other portion of the settlement. The note was turned over to Mr. and Mrs. Hays." (This was the mortgage note.) "I think I sent the papers down or directed them to Mr. Hays. The face of it might be $10,000, or something like that. The California Bank matter was paid, and my impression is that that was transferred with the papers. I don't remember the particulars, but I think I gave Mr. Baldwin a receipt on their being passed over and the transac-

tion closed. I gave Mr. Baldwin a receipt for the documents; I am not sure, but I think I did."

He further states that the time occupied in the negotiations and accomplishment of this family settlement was "from two to four, perhaps five weeks."

Mrs. Hays is asked (P. 74, Q. 167):

"Then as the result of the meeting at Mr. Rearden's rooms, both suits were to be dismissed, the debt of Mr. Brown was to be paid, and the fee of Mr. Winchell was to be paid, and the conveyance was to be made to Mr. Haggin, was it not, of the property, or somebody else?

A. Yes, sir."

Mrs. Hays returned to Redwood City, and at a later date she and her husband came to San Francisco and closed up the settlement. (Fol. 217.)

It is evident that Mr. DeWolf exercised no personal influence upon the plaintiff in bringing about the compromise; on the contrary, he declined to hold conversation with her on the subject.

"Q. 177. Well, you say at that time you commenced talking business to Mr. DeWolf, and he declined to talk business in the absence of the attorneys?

A. He did not say he declined, but simply turned the subject and refused to answer, or would bluff me off from my question." (Record, p. 75.)

It certainly cannot be said that there is anything which can be found in the deposition either of Mrs. Hays or of Judge Rearden, her counsel, which will furnish the least foundation for the charge that there was any improper influence on the part of Mr. DeWolf in effecting this family settlement. The whole transaction appears as one of the most ordinary character, with the single exception that

it originated with counsel and was conducted throughout by their advice and with their participation.

It is charged in the bill of complaint that the assignment of the mortgage and note secured thereby to J. B. Haggin was without consideration. This is not at all material.

The defence of this case does not set up the shield of protection which everywhere is afforded to a purchaser for value without notice. The fact is, that Haggin did acquire title to it as a purchaser for value, as appears from his deposition. (Record, pp. 58 to 64.) We treat the transaction as the parties at the time of the settlement treated it, as one in which the substantial interest in the mortgage note, after discharging any lien which Mr. Haggin had upon the same for his security, reverted to De Wolf. So far as Mr. Haggin was concerned, the consideration for the deed to him from Hays and wife, of January 16, 1877, was "the relinquishment of the debt—satisfaction of the debt." (Record, p. 63, fol. 186.) In addition, the defendants, DeWolf and wife, contributed to bring about the settlement by undertaking to discharge Mrs. Hays from liability on Brown's note for $1000 against her, by paying the fees of her counsel in court in the prosecution of her suit for damages against him, and by paying the further sum of $300 on account of certain small items of personal property upon the ranch, as stated by Judge Rearden in his deposition.

This Suit Would Never Have Been Brought Except for the Fact that in the Course of Seven Years After the Settlement the Fresno Lands Rose Greatly in Value.

We have seen that Mrs. Hays was dissatisfied with her purchase made in 1872. She brought suit to recover damages on the ground that the ranch had been sold to her at too high a price and upon a misrepresentation as to its present and prospective value. She had lived upon the premises for about thirteen months. (P. 75, Q. 179.) She did not regard the lands as of good quality for the purpose they were bought for. (Q. 180.) She was dissatisfied with them as a sheep farming ranch, and she made an affidavit in opposition to the motion to change the place of trial from Fresno to San Matoe, that she expected to prove by some fourteen witnesses that these lands were not of first class quality, either *as agricultual* or *grazing lands*, and at the time that she purchased them, they were not worth more than $2.50 an acre. (P. 76, Q. and A. 189.) The idea that the lands would in the course of time rise in the market in value, never occurred to her. She was unwilling to continue in the speculation, but was quite ready to be rid of the adventure and leave the land on the hands of DeWolf. When in the course of seven years circumstances did cause the lands to appreciate in the market, this effort is made to rescind the settlement and to be reinstated in the ownership of her former interest in the property.

C. H. Norris (Record, pp. 77-79) has been acquainted with the lands in Fresno County since 1876. He has a

general knowledge of the lands in this controversy. He considers that a fair valuation, in the view of "the land being cut up by ditches," (irrigated) "is at least worth $35 per acre."

> "Q. 8. Are the lands in that section of Fresno County being improved, and have they been so in the last two or three years past?
>
> A. Yes, sir; rapid.
>
> Q. 9. The lands in that immediate section of the country then, as a fact, are increasing in value per acre?
>
> A. Yes, sir."

Edward B. Perrin (Record pp. 87 to 92) has been acquainted with the lands since 1877. He says that the value of the lands in 1877 was about $5 per acre; that at that time irrigation had not been introduced to anything like the extent that has been done recently; and that the lands in that vicinity have greatly risen in value in consequence. He further states that Mr. DeWolf, sometime between 1877 and 1880, was himself discouraged at the prospective value of the Fresno lands, and proposed to exchange them with the witness for a piece of land in San Francisco. At the rate of exchange proposed by Mr. DeWolf, the Fresno lands were offered at $4 per acre. He further says that the lands commenced to appreciate about 1881. He purchased land of one of the corporate institutions in San Francisco in that region about that time at $2.25 per acre. (Fol. 261.) He instances various cases of actual sales showing the rapid increase in the value of this property which has occurred in recent years. The witness has been a very extensive dealer in lands, as appears by his testimony, and is apparently thoroughly qualified to speak upon the question, and he states that it is within the last four years that the principal increase has taken place, and that these lands in contro-

versy would average in value $25 per acre. (Fols. 267, 268.)

Butler B. Miner (pp. 92 to 94) says that he has a general knowledge of the lands in the immediate vicinity, and that he has been acquainted with them since 1877. Land of the same character and quality as DeWolf's lands sold in Fresno County in 1877 from $4.50 to $5 per acre. (Fol. 272.)

There is no testimony to rebut these statements, and it ought, therefore, to be taken as proved that the value of the lands in controversy in this case has increased from say $5 per acre, in 1877, to $25 and upwards at the time of the filing of this bill. Such increase was due probably to a combination of several causes, but largely to the fact of the more extensive introduction of irrigation.

The Complainant is Furthermore Debarred, in a Court of Equity, from any Relief in this Case, on the Ground of her Gross Laches.

I claim to have fully established from the record in the case the entire want of any merit on the part of the complainant in this action. If the bill of complaint had been filed within a month after the transaction of settlement between the parties under the management and direction of counsel, it would have been the duty of a court, I respectfully submit, upon the facts disclosed in the record, to have dismissed the bill for want of equity. It is the policy of courts to encourage fair compromises of litigations between parties. Especially is this so when the dispute

arises between family connections. A court of equity is always loth to disturb a compromise which has been accepted and acquiesced in for a series of years. It never has disturbed one that was made in good faith between the parties acting under competent advice and in the absence of any evidence tending to show that any undue or improper influence was resorted to amounting to an overreaching of one party by the other. Both parties were of full age, and competent to act for themselves, but, in addition, they were aided respectively by judicious and able counsel. The plaintiff was indeed a *femme covert*, but she did not thereby sink her individuality or capacity for independent action. She has drawn her own portrait on p. 54 (fols. 159-162) when she describes the part that she played in an episode which occurred between her and Mr. DeWolf in 1884 in the parlors of the Grand Hotel in San Francisco.

At this interview Mr. DeWolf might have been deficient in courtesy in not holding an argument with the plaintiff on the subject, but he certainly exhibited his prudence in declining a wrangle, and in referring the business matter to his counsel.

The plaintiff could have brought this suit at any date after January 16, 1877, which she chose to select. The absence of the defendant from the state is not alleged as any bar to her instituting proceedings in the nature of proceedings *in rem* against the Fresno lands, because in fact the statutes of California provide for such cases, and the service in this case was obtained by publication. *Pennoyer* vs. *Neff*, 95 U. S. 719. The plaintiff, therefore, was not laboring under any disability

which would excuse her delay for not bringing this action.

It is a settled doctrine of a court of equity that parties who seek relief from the effect of a deed or agreement to which they themselves are parties, on the ground of mistake or of fraud, shall proceed with diligence to assert their claims. Courts look with great suspicion upon stale claims of this class. Courts act upon the principle that if a party conceives that he has suffered a wrong, he must proceed at once to have it righted, and if there be a long period of delay before he takes action, not satisfactorily explained or reasonably accounted for, the presumption is that he did not in fact suffer any wrong. When in addition to long delay it appears that there is a pecuniary interest to set aside the transaction so entered into, the presumption is so conclusive that it is practically impossible to overcome it. In this case the pecuniary interest is shown by the fact that between the time of the settlement in January, 1877, when a suit of this character could have been brought, and the time this suit was brought in May, 1884, the lands had increased in value five-fold. (Rec. pp. 87-91). This is not a case where a party has entered into a contract or agreement under the supposition that its terms and provisions were different from those which appear in the written instrument. In this case the plaintiff was the actor in the transaction. If she was overreached by the defendant she was as cognizant of that fact on January 16, 1877, as she can be now. If a compliance with a husband's request under circumstances where she stood out for better terms in executing his advice to compromise, and was the actor in the business, constituted such undue influence or

coercion as the law can recognize, she would have been more likely to have smarted under the injury on the morning after the 16th of January, 1877, than seven years later.

In a case like the present the strictest diligence is enjoined by the law, and especially in a case where a portion of the land in question has been, during the last six years, sold in small parcels to bona fide purchasers for value. This court has had occasion to deal with this branch of the law in repeated cases, and it is unnecessary, in support of the proposition made, to do more than to cite them:

Wollensak vs. *Reiher*, 115 U. S., 96;
Sullivan vs. *Portland*, 94 U. S., 806, 812;
Beaubien vs. *Beaubien*, 23 How., 190;
Stearns vs. *Page*, 7 How., 819;
Moore vs. *Greene*, 19 How., 69;
Marsh vs. *Whitmore*, 21 Wall., 178, 185;
Godden vs. *Kimmell*, 99 U. S., 201;
Badger vs. *Badger*, 2 Wall., 87, 95;
Wood vs. *Carpenter*, 101 U. S., 135;
Lansdale vs. *Smith*, 106 U. S., 391.

And on the subject of presumption of acquiescence after considerable delay:

Fisher vs. *Boody*, 1 Curtis, 206, 219;
Prevost vs. *Gratz*, 6 Wheat., 481;
Elmendorf vs. *Taylor*, 10 Wheat., 152;
Piatt vs. *Vattier*, 9 Peters, 405, 416;
Stearns vs. *Paige*, 1 Story's R., 204, 217;
Wagner vs. *Baird*, 7 How., 234; 1 Mad. Chan., 99;
Lawrence vs. *Blake*, 8 Clarke & Fin., 504;
Hough vs. *Richardson*, 3 Story's R., 659.

The Decree of the Court Below.

A thorough examination of the record of the case fails to furnish any reason for the decree of the Circuit Court in this controversy. The reasons for its justification must be looked for elsewhere. They are not to be found in the record. It is only from a reading of the printed brief on behalf of the plaintiff in the court below that any light is obtained on the matter. Assuming that the case may be presented before this court upon the same theory, it is proper to make a reference to it.

An effort is made to change the whole character of the gravamen of the bill, and to endeavor to establish that DeWolf in the original transaction was in fact a trustee to the plaintiff, and as such trustee had invested the plaintiff's money in the land in question and had abused her confidence. The only support that is pretended for this view is that which is derived from the ex parte allegations of the pleader in the complaint filed in the suit of Hays *vs.* DeWolf for damages on account of misrepresentation in the sale of these Fresno lands and ranch business, and which was introduced by the defendants as an exhibit. (Record p. 109.) The record was introduced because the plaintiff had testified in her deposition in general terms as to the fact that she had instituted such an action. It was necessary for the defendant to show exactly that the plaintiff had once sought, by a proceeding at law, to demand compensation in damages for her alleged injury in the ranch

transaction, and that on the 23d of February, 1877, as the result of the compromise effected between the parties and their counsel, of all pending litigation between the parties, on January 16, 1877, this action at law was dismissed by a stipulation filed in the case, and by the order of the judge of the court thereon. (Record, p. 119, fol. 341.)

It is of course unnecessary to argue before this court that the introduction of the judgment roll in a legal proceeding is no admission of the truth of the facts stated in the pleading. But even if the rule were otherwise, the complaint in the case does not set forth or pretend that the defendants as trustees to the plaintiff invested her funds in the Fresno land. But the best answer to the allegation that there was any trustee relation between DeWolf and the plaintiff so as to enable her to follow a trust fund in his hand when the same had been converted into land, is found in the conspicuous absence of any allegation to that effect in the testimony of the plaintiff which she gave when she was under oath in the summer of 1885 in giving her deposition in the present case. She was taken over the whole ground of her relations with the defendants, and makes no such assertion.

The defendant in the court below had no occasion to meet any such issue. There is nothing in the pleadings which suggest it, and it appears for the first time in the argument of counsel. It was influential enough, however, apparently, to induce the court below to disregard the plaintiff's averment in the sixteenth clause of the bill of complaint that she was still indebted to DeWolf in the full amount of the debt and interest secured to

be paid upon her note for $10,835, dated December 12, 1872, and which note had, as the court will remember, been surrendered to her on January 16, 1877, by her counsel, Judge Rearden, to whom the same was delivered when the compromise arrangement of that date was carried out.

No principle in equity jurisprudence is better settled than that a Court of Chancery can grant relief only *secundum allegata et probata*, and that where there are special prayers for relief, accompanied with a prayer for general relief, the Court, if the special relief fails, under the prayer for general relief can give such relief only as the case stated by the bill and sustained by the proof will justify. If the relief prayed for according to the frame of the bill cannot be given, then no other relief, under a general prayer, which is not warranted by the case made by the bill, can appropriately be given, notwithstanding that the plaintiff might possibly have correctly framed his bill in a double aspect, and with prayers for relief in the alternative.

The general doctrine undoubtedly is, that a court may afford relief under a prayer for general relief, provided it is such relief as is agreeable to the case made by the bill.

1 Daniels' Ch., 378 et seq.; note 5 and cases;
English vs. *Foxhall*, 2 Pet., 595;
Hobson vs. *McArthur*, 16 Pet., 182.

Even when the prayer for general relief is sufficient, the special relief prayed at the bar must essentially depend upon the frame and structure of the bill, for the court will grant such relief only as the case stated will

justify, and will not ordinarily be so indulgent as to permit a bill framed for one purpose to answer another, especially if the defendant may be surprised or prejudiced thereby.

Story's Equity Pleading, Sec. 42 and note 3;
Herrin vs. *Mill*, 13 Vs. Ch., 120;
Walker vs. *Devereux*, 4 Paige, 229.

In equity, relief is granted only *secundum allegata et probata*, and under the prayer for general relief it can give such relief only as the case stated by the bill and sustained by the proof will justify. Where, therefore, in a particular case, the bill contained no allegation in it applicable to a bill seeking relief on the ground of a fraudulent conveyance of real estate, and the proof failed to establish the fraud alleged, the court could not reach an equitable interest growing out of the property conveyed without fraud, and grant relief on that account under the general prayer therefor.

Scudder vs. *Young*, 25 Maine, 153;
Grimes vs. *French*, 2 Atk., 141;
Downer vs. *Fortescue*, 3 Atk., 124;
Halstead vs. *Meeker*, 3 C. E. Green (18 N. J. Eq.),136;
Thompson vs. *Smithson*, 7 Porter (Ala.), 144;
Peck vs. *Peck*, 9 Yerger (Tenn.), 301;
Isaacs vs. *Steele*, 3 Scam. (Ills.), 154;
Jordan vs. *Clarke*, 1 C. E. Green (16 N. J. Eq.), 243;
Simplot vs. *Simploy*, 14 Iowa, 449;
Landis vs. *Olds*, 9 Minn., 90;
Wilson vs. *Horr*, 15 Iowa, 489.

Whenever the plaintiff shall see fit to exhibit her bill against DeWolf and tender an issue on the subject of his relation to her in the Fresno ranch busi-

ness, or impugning his good faith and entire uprightness in the whole transaction, it will be met by a presentation of the truth in this disagreeable family controversy, which will be based principally upon the written statements, and conduct in harmony therewith, of the plaintiff herself. As yet no such issue has arisen in the present controversy. It is surely not competent for the complainant, when she finds herself unable to prove her case, as stated in her bill, to fall back upon an assumed case of trusteeship, outside of any allegation in the bill itself.

I respectfully submit as the proper conclusion from the investigation of the record, that the decree of the Circuit Court should be reversed, and that the case should be remanded to the Circuit Court for the District of California, with instructions to dismiss the bill of complaint.

Kinnaird Thurston

Of Counsel for Appellants.

125-614

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SUPREME COURT OF THE UNITED STATES.

FRANK E. DEWOLF *et al.*
vs.
FLORENCE W. HAYS.
} No. 868.

SUBMITTED UNDER 20th RULE.

ARGUMENT OF

W. HALLETT PHILLIPS,
BEN. MORGAN,
Counsel for Appellee.

R. O. Polkinhorn, Printer.

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rightness

SUPREME COURT OF THE UNITED STATES.

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No. 868.

BRIEF OF W. HALLETT PHILLIPS AND BEN. MORGAN FOR APPELLEE.

The facts of this case cannot be better or more succinctly stated than by reproducing the bill of complaint, filed by the appellee, in the first instance, in the Superior Court of California, for the City and County of San Francisco and verified by her oath.

The Bill.

"The plaintiff, for cause of action against the defendants, alleges:

I.

That she is a citizen of California, and has been for five years past.

II.

That defendants, Frank E. DeWolf and Isabella C. DeWolf, are citizens of the State of New York, as

she is informed and believes; and that defendant, Horace M. Barnes, is a citizen of the State of Rhode Island.

III.

That heretofore, to wit, on the 12th day of December, A. D. 1872, she was the owner, by purchase, with her own separate funds, of the undivided one-half of certain lands situated in Fresno County, California, bounded and described as follows, to wit: All those certain lots, pieces and parcels of land bounded as follows: Sections twenty-four, twenty-eight, thirty, thirty-four, thirty-six, and the south half of section twenty, all in township fourteen south, range twenty-one east, Mount Diablo base and meridian; and also section six in township fifteen south, range twenty-one east, Mount Diablo base and meridian.

IV.

That she purchased said described lands from Frank E. DeWolf and Isabella C. DeWolf, and in part payment of the same gave her promissory note, secured by a mortgage on said lands.

V.

That subsequent to the making of said note and mortgage, and after said note became due, said Frank E. DeWolf and Isabella C. DeWolf transferred and assigned without consideration said note and mortgage to J. B. Haggin, who thereafter, at the

request and for the use and benefit of said Frank E. and Isabella C. DeWolf, commenced an action to foreclose the same; that said action of foreclosure was subsequently dismissed upon plaintiff executing and delivering to said J. B. Haggin a deed for said lands in said mortgage described.

VI.

That in all of said transactions, and particularly in the taking of said deed, said Haggin acted as the agent of said Frank E. and Isabella C. DeWolf.

VII.

That thereafter the said J. B. Haggin, at the request of said Frank E. and Isabella C. DeWolf, without consideration, conveyed, by deed dated February 1st, 1877, said described lands to Joseph DeW. Dimmick, who received the same as agent and in trust for said Frank E. and Isabella C. DeWolf.

VIII.

That thereafter, on or about the 12th day of February, 1877, said Joseph DeW. Dimmick conveyed without consideration, and at her request and that of Frank E. DeWolf, said described lands to defendant, Isabella C. DeWolf.

IX.

That thereafter, to wit, on or about the 5th day of March, A. D., 1884, said Frank E. and Isabella C.

DeWolf, without consideration, conveyed by deed said lands, except section 30, to Horace M. Barnes, of Bristol, Rhode Island.

X.

That said Horace M. Barnes has been for many years, and was at the time of making said deed, the confidential legal adviser and friend of said Frank E. and Isabella C. DeWolf, and took said deed at their request, and for the purpose of covering up and concealing their title to the same, the better to cheat and defraud complainant.

XI.

The plaintiff executed and delivered said deed to J. B. Haggin, as the agent of said Frank E. and Isabella C. DeWolf, at the urgent solicitation of her husband, John J. Hays, who was at the time an invalid, unable to attend to business, and who importuned plaintiff to make such deed, urging as a reason that he was unwilling to die and leave her involved in a litigation which might result in her pecuniary ruin; and complainant yielding to his entreaties and persuasions, consented to and did make said deed.

XII.

That said Frank E. and Isabella C. DeWolf well knew at the time of the execution of said deed to J. B. Haggin, that the same was made by complainant under the influence of her said husband, and because of his persuasions and solicitations, and was not her free and voluntary act.

XIII.

That said Frank E. and Isabella C. DeWolf, soon after the execution of said deed by said Dimmick to them, departed the State of California and have since remained absent until on or about the month of February, 1884, when said Frank E. DeWolf returned to the State of California, where he remained for a few weeks and then again left said State.

XIV.

That since the conveyance by plaintiff to J. B. Haggin of said described lands the defendants, Frank E. and Isabella C. DeWolf, have been in possession of said land, receiving and enjoying the rents and profits.

XV.

That the amount of rents and profits so received plaintiff is unable to state, but avers that the same amounts to a large sum of money.

XVI.

That she is still indebted to defendants, Frank E. and Isabella C. DeWolf, the amount of said note and interest herein alleged, less the amount of rents and profits of said land belonging to her and received by said defendants DeWolf, which she is ready and willing to pay, and has been at all times.

XVII.

That the value of the interest in said lands sought to be recovered herein, is of the value of $100,000.

Wherefore plaintiff prays for an accounting between herself and Frank E. DeWolf and Isabella C. DeWolf; that upon payment by her or tendering the amount found due to them upon such accounting they be decreed to convey to her by good and sufficient deed an undivided one-half interest in the lands herein described; that the deed made by Frank E. and Isabella C. DeWolf, of date March 5, 1884, as to plaintiff, be declared fraudulent, and null and void. For general relief and costs of suit." (R. 1-3.)

The defendants being non-residents, an order of publication was issued under the State Statute, which the defendants moved to set aside. This was refused, as also a motion to set aside service of summons. (R. 8, 21).

Thereupon the defendants filed their answers.

Answers.

The answers are signed, not by the defendants, but by Messrs. Baldwin, Haggin and Swortfigner, as their attorneys. They are verified by the oath of Swortfigner alone, who, prior to filing the answer, had not appeared in the suit, and who did not subsequently appear. The answers were filed nine months after the bill. No reason, except absence from the State, is suggested as a reason why the defendants themselves did not answer.

Swortfigner does not state that the facts constituting the defense were within his knowledge. (See Sec. 446, Civil Code Procedure, California.)

The answer, filed for Frank E. and Isabella C. DeWolf, denies that the note and mortgage were transferred to Haggin without consideration for their benefit, or as their agent, and alleges that he acquired title to the note and mortgage and that he commenced suit to foreclose the same.

They also deny the transfer was made by Haggin to Dimmick, and by Dimmick to Isabella C. DeWolf, as their agent, or was without consideration. There is no denial that the conveyance to Dimmick was made at the request of defendants.

As to the transfer to Barnes, they admit the same, but deny that it was made for the purpose of covering up or concealing their title or with intent to defraud complainants. They deny that the plaintiff executed the deed to Haggin as their agent. They allege, upon "their information and belief," that said deed was executed by plaintiff freely and voluntarily and was acknowledged by her, upon an examination, apart from and without the hearing of her husband, and they also deny any knowledge of the fact that the deed was made by plaintiff at the request and solicitation of her husband.

As to their possession since the making of the deed of plaintiff to Haggin, they admit that since February 12, 1877, till about March 5th, 1884, they were in possession of nine undivided tenths of said land, but they deny that during that time they received any rents or profits whatever from said land over and above the amount necessary to pay the taxes and expenses.

They also set up the defense of the Statute of Limitations. (R. 28–30.)

The answer of Barnes admits that the conveyance to him was without consideration, but denies that it was made for the purpose of concealing the title or defrauding the plaintiff. (R. 32–35.)

After the answers had been filed, the complainant removed the suit into the United States Circuit Court. (R., 36.)

The defendants appeared in that court, and testimony was taken upon both sides.

Decree.

On consideration whereof, there was a decree entered by the Circuit Court, declaring the deed of Frank E. and Isabella C. DeWolf to Barnes to be null and void, and ordering the DeWolfs to execute to complainant a deed of an undivided one-half interest to the land in controversy. In the event of their failure so to do, that the clerk of the court execute and deliver the same in the name of the said respondents; for which purpose the said clerk was appointed commissioner. (R. 42.)

Proofs.

The examination of the complainant, Mrs. Hays, shows that the defendants, DeWolf and herself, are relatives, and were intimate friends. In 1871 Mrs. Hays removed to California with her husband in the hope of benefiting his health. He was, at the time, suffering from consumption, together with a complication of other disorders. Soon afterwards the defend-

ants, DeWolfs, also removed to California, for a time making their abode with the complainant. Owing to the ill state of the health of Mr. Hays he entrusted much of his business, and that of his wife, to DeWolf.

Mrs. Hays was possessed of a considerable personal estate, and through the influence of DeWolf her husband was persuaded to buy with her money ten thousand acres of land in San Luis Obispo County, California. Acting under the same persuasion this land was sold in 1872 and the money of Mrs. Hays was intrusted to DeWolf who invested it in a one-half interest in lands in Fresno County, owned by him—the property now in controversy.

DeWolf represented in the highest colors the resources of Fresno and the large returns he had made there.

The conveyance by the DeWolfs to Mrs. Hays is found appended as an exhibit to complainant's testimony.

By it the DeWolfs convey to Mrs. Hays, as her separate property, the one-half interest in the lands, as also in some personal property therein, and the consideration stated is $23,435. (R. 94.)

A mortgage was given by Mrs. Hays to secure a note due four years from date, for a deferred payment of $10,835.

There arose a controversy as to whether Mrs. Hays justly owed this amount, and she, in May, 1876, filed a bill in the State Court against DeWolf charging fraud and seeking to have the note and mortgage declared void. To this complaint a demurrer was filed by the defendant.

In November, 1876, the complainant, on arriving in San Francisco from Fresno, was served with a notice of a suit instituted, by J. B. Haggin, to foreclose the mortgage, the note having matured. No previous demand had been made by him for payment. This note, it was claimed by Haggin, had been transferred to him by one Dimmick, to whom it had been transferred by DeWolf. Dimmick was a nephew of DeWolf. As was amply shown, however, Haggin was only acting as the agent of DeWolf, and the transfer to him was wholly without consideration.

When, on November 24, Mr. Hays reached San Francisco, he was informed of the service of the summons in the foreclosure suit. He was at the time very ill. He seemed overwhelmed with the intelligence, and it had at once a very depressing effect upon him.

Haggin, the apparent owner of the note and mortgage, was a person of great wealth, and a leading man in the community. DeWolf was also possessed of means. All that the Hays had, outside of the Fresno property, was $1,800.

Mrs. Hays thus testifies as to the reasons given by her husband in order to persuade her to give up the property to DeWolf:

"He (Mr. Hays) thought it would be a long siege of litigation, and he probably would not live to see it through, and that I would be left with this net work of legal trouble upon me, and all we had was $1,800; and he seemed to be a little afraid that even that would go, too, and he asked me if I would feel willing to give it up and get a clearance, and wipe the whole thing out—get rid of the whole thing. (R., 51.)"

He suggested that she should make a deed to the property.

A further reason he gave her for making it was that "he did not want to leave her, with that litigation on her hands, perfectly incompetent."

He was liable to die at any time on account of heart trouble.

She thus more particularly narrates what he said to her in regard to the settlement.

"I went into the room and found him crying. I asked him what was the matter. "Well," he said, it seemed as if all the troubles that were heaping upon him would certainly kill him—and he had so much already. I said I would do just as he desired. He wanted me to get it done; he said that the whole thing was more than he could stand, and it was killing him; and that the best thing, may be, that it would be best to give it up, and he asked me if I was willing to do it, and I hesitated; did not know what to think was best myself, and then afterwards he seemed to feel that he would not be so much worried and so much troubled, and I said I would do any thing for him that would give him mental relief. He seemed to be in such terrible mental trouble, as well as physical, that I said I would just withdraw—wipe the thing just out and commence on the new." (R., 53.)

She further says:

"We would have continued it at all hazards, only for this Haggin business coming down on us; it frightened my husband and it frightened me, and I did not see there was any prospect, any way of getting out of such strong power as they presented at that time."

It was under the pressure of these circumstances that Mrs. Hays, with her husband, signed the deed to Haggin conveying all her interest in the Fresno property. At the same time, and as part of the same transaction, she signed a release of all claims against the DeWolfs. Thereupon the foreclosure suit was dismissed and the note surrendered.

From the time of making this deed, in 1877 Mr. Hays continued to sink rapidly, and died in the succeeding year.

In this whole transaction, Mrs. Hays dealt with DeWolf, who alone appeared as the party in interest. In an interview with him previous to her signing the deed, "she told him that she wanted to wipe out the whole thing on account of Mr. Hays, because it was his ill health."

"I told him I did it because it was a wife's duty; in other words, to do what he told me to do." (R. 57.)

She also upbraided him for having the foreclosure suit brought, and, "recalled that he had always promised that the first crop of wool of the ranch would pay the mortgage, and never to give it a second thought." (R. 56.)

Dr. Kirkpatrick, the attending physician of Mr. Hays, testified as to his condition from 1876 to the time of his death. He says, from 1874 to the end, his physical invalidity and physical force continued to decrease gradually; there was a gradual wasting away of his powers of life. Besides the pulmonary trouble, he suffered from disease of heart and the kidneys, and his nervous system was affected to a

very great extent. Owing to his physical condition his mental faculties were impaired. "He was extremely nervous and sensitive, and easily affected by almost everything surrounding him." (R. 67.)

On cross-examination he was asked, "Was not his mind about the same up to within six months of his death, as it had been at any time during four or five years?"

He answered, "He did not think so." "I think just as I say, that the physical depreciation of vital powers—physical force of his mind and the physical evidences of it—followed in correspondence with it."

He was further asked if, during the summer of 1877, did he not find Mr. Hayes in about the same condition in respect to his ability to attend to business as he had been for two or three years before that?

He answered, "he did not think so." (R. 71.)

Mr. T. H. Rearden, at the time of his examination, judge of the Superior Court of San Francisco, testified that he had been consulted by Mr. Hays, as his friend, regarding some of the matters which we have detailed, and discussed with him the question of settling the matters in issue. He had very little conversation with Mrs. Hays touching the matter; "all propositions of every kind were formulated by her husband." The latter suggested a settlement.

The reasons given by him to Judge Rearden for wanting to settle are thus stated:

"The substance of his representations were that he and Mrs. Hays, financially, would be run into a pretty

close corner by these different combinations; that they were practically without means to carry on any extensive litigation, which seemed to be opening up, and his health was bad, and he did not want to risk his labor and time on the great uncertainties of this business. Practically, the great point with him seemed to be his utter inability to control means as the matter stood, to carry on a litigation. The matter was suggested to me that here was a suit in Fresno County, and liable to be transferred to San Mateo County; if the allegations were to be supported by proof at all, or the complaint, they would have to be supported by a swarm of witnesses, whose attendance on the court would be expensive. All the items of litigation would be large and expensive, and a great weight upon him. It would be years before it was fully settled, and Mr. DeWolf was a man of means and position financially, and Mr. Haggin was, as I say, almost an autocrat in that southern country; and these matters frightened Mr. Hays." (R. 84.)

He further testified as to the physical and mental condition of Mr. Hays, at the time:

"He had no interview either in the city or the country with me, but Mr. Hays, without any discussion or conversation with me—that he did not cry; he cried every time; he was as bad as a woman in that matter; that is evidence.—Whatever a medical man may say, that was evidence of the physical weakness. He burst into tears at my first interview. I had not talked to him more than three minutes when he burst into crying, and it was that that probably made me take hold of the business in anyway, when I knew there was another attorney perfectly competent to manage it at the other end; I did not like to show myself unsympathetic in the matter." (R. 84.)

He also states that facts were laid before him which, assuming the ownership of the note and mortgage to be in DeWolf, and the facts proved, might be defenses to the note and mortgage. (R. 83.)

Haggin, who brought the foreclosure suit, and to whom the conveyance was made by Mrs. Hays, was examined on behalf of the complainant, principally to show that he had acquired the mortgage and note without consideration, and as the mere agent of DeWolf to foreclose the mortgage and collect the note.

This is conclusively proven by his testimony. He also states that the land was all they (the Hays') had.

It was equally conclusively shown that Dimmick, to whom Haggin alleges the transfer was made by DeWolf, was but the *alter ego* of DeWolf and the transfer was made without consideration.

Plenary evidence of these facts appears also from testimony of Mrs. Hays. (R., 55–57.); Judge Reardan. (82–84.)

The only witnesses produced on behalf of the respondents were Perin & Miner, whose testimony is confined to the question of the value of the property.

The other evidence offered by them, was a copy of the complaint brought by Mrs. Hays *vs.* DeWolfs.

Argument.

The ultimate facts, established by the evidence, correspond with the main allegations of the bill, and justify the relief granted.

1. They show that the conveyance in which Mrs. Hays joined, and by which she made a sacrifice of her entire separate property, was made under the influence of her husband, because of his solicitation and as a means to gratify him. That at the time Mr. Hays was in a desperate state of health, which fact, together with their necessitous condition, and the pressure which was brought to bear upon them by the respondent, who was co-owner of the property with complainant, were the considerations which induced Mr. Hays to importune his wife to make the conveyance, and induced her to consent thereto. These facts were all known to the respondents before the conveyance was made.

2. The conveyance, although in form to Haggin, was really for the benefit of the DeWolfs—the transfer of the debt having been made to Haggin in order that he should appear as the owner, for the purpose of foreclosing the mortgage. It is further shown that the conveyance of Haggin to Dimmick was also for the benefit of the DeWolfs.

The principles of law applicable to the case are elementary.

Chancery has always exercised a supervision over contracts or transactions affecting the property of married women, to see that no unfair advantage has been taken of them. This class of cases is one which commonly calls for the exercise of the moral jurisdiction of the court.

While their right to dispose of their separate property is recognized, every such disposition is scanned to ascertain whether it is equitable that it should be enforced. That examination is all the more partic-

ular when, as in the present case, a conveyance of her property is made under the influence of her husband, at his request and for his gratification.

There is a yet further reason for scrutinizing the transaction, when the dealing is between mortgagor and mortgagee.

"Necessitous men," says the Lord Chancellor, in *Vernon* vs. *Bethell*, 2 Eden, 113, "are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them."

We ask the court to consider the circumstances existing at the time of the conveyance in question. Mr. Hays was then enfeebled in body and mind; death was staring him in the face. While in that condition, additional troubles were cast on him by the suits in which his wife was a party, and in which her whole fortune was involved. There was the suit which she had instituted against the DeWolfs, to establish equities against the enforcement of the mortgage debt. Before any determination of that controversy can be made the debt becomes due, and he finds that it had been transferred to one of the wealthiest men in the community, by whom a foreclosure suit is at once instituted against his wife. This transfer, if *bonâ fide*, might cut off the equities which existed against DeWolf, and close every avenue of escape. He sees that he is dealing with a man determined to push him to the wall.

He is oppressed with the anticipation of a litigation which promised to outlast the little time he had yet to live, and which was destroying what peace of

mind he had left. A contest had opened in which he was too weak to engage, and for which his wife, when left alone, would be more unfitted than himself. It is then that he implores his wife to sacrifice all that was involved—"that the whole thing was more than he could stand, and it was killing him." Moved by his supplication—in the hope of giving him some peace—of satisfying what might be his last desires, the wife obeys his request, and with him signs away her property. Before doing so she makes a last appeal to DeWolf, but in vain.

Can her act, performed under such influences, be pronounced by a court of equity as free and voluntary, and be enforced against her to her injury by the party cognizant of all the circumstances?

Did not every dictate of natural affection constrain her to be guided by her husband? What she did, we submit, must be considered by equity, as done *sub potestate viri*, and to allow a party dealing with her in such a situation to enforce his bargain would be to assist a fraud.

Story, in speaking of agreements made by parties, *sui juris*, says, that cases of surprise and sudden action, without due deliberation, may properly be referred to the head of fraud or imposition, for "an undue advantage is taken of the party under circumstances which mislead, confuse, or disturb the just result of his judgment, and thus expose him to be the victim of the artful, the importunate, and the cunning.

If a contract is made under circumstances that demonstrate that the party had no opportunity to use suitable deliberation; or that there was some in-

fluence or management to mislead him, this is a case for the interference of equity.

If he is importunely pressed—if those in whom he places confidence make use of strong persuasions, in these and many like cases—equity will assist the party upon the ground of fraud and imposition or unconscionable advantage. 1 Story Eq. Jur., § 251.

If this is the principle, as applied to those having full capacity to act, equity will, on much slighter ground, extend its arm to protect those who are, from their situation, unable to protect themselves, and are, therefore, peculiarly under its care.

It is impossible, from the facts exhibited in the record, to say that the parties met on equal terms. The case is one of an undue advantage taken by the respondent DeWolf of the necessities and helplessness of a woman to whom he was bound by ties of trust, relationship and intimacy.

Her consent to the surrender of her property was imperfect,—there was no freedom of judgment,—no liberty of action.

Surely a court of conscience will set aside a disposition of property made by a person in the condition of complainant, on grounds far short of what constitutes legal duress.

Moral compulsion is often more potent than physical constraint, in producing that agitation of the mind which is opposed to freedom of action.

Story instances, as cases where a party may be subjected to undue influence, those where he does an act or makes a contract under the influence of apprehensions, short of duress. For, he adds, in cases of this sort, he has no free will, but stands *in vinculis*.

"The constant rule in Equity," says he, "is, that where a party is not a free agent, and is not equal to protecting himself, the Court will protect him. Circumstances of extreme necessity and distress of the party, although not accompanied by direct restraint or duress, may, in like manner, so entirely overcome his free agency as to justify the Court in setting aside a contract made by him on account of some oppression, or fraudulent advantage, or imposition attendant upon it." (1. Story Eq., Jur. § 239.)

In a subsequent section, he shows that this doctrine is especially applicable to the engagements of a *feme covert*. (Ib., § 243).

Substantially, the same statement of the law is made by Mr. Pomeroy in his treatise on Equity Jurisdiction, vol. 2, Sections 948, 951.

"Whenever," says he, "one person is in the power of another, so that a free exercise of his judgment and will would be impossible or even difficult, and *whenever a person is in pecuniary necessity* and distress so that he would be likely to make an undue sacrifice, and advantage is taken of such condition to obtain from him a conveyance or contract which is unfair, made upon an inadequate consideration or the like, even though they be no actual duress or threats, Equity may relieve defensively or affirmatively."

In this connection, the observations of Mr. Justice Wilde, on a question as to the validity of a will, may be applied:

"Pressure of whatever character, whether acting on the fears or the hopes, if so exerted as to overpower the volition, without convincing the judgment, is a species of restraint under which no valid will

can be made. Importunity or threats, such as the testator had not the courage to resist; moral command asserted and yielded for the sake of peace and quiet, or escaping from distress of mind or social discomfort, these, if carried to a degree in which the free play of the testator's judgment, discretion, or wishes is overborne, will constitute undue influence, though no force is either used or threatened. In a word, the testator may be led, not driven, and the will must be the offspring of his own volition, and not that of another." *Hall* vs. *Hall*, 37 L. J., Ch. 24.

There is not and cannot be any fixed abstract rule which regulates the relief which equity will grant in cases where there is an absence of the elements essential to consent, or where advantage has been taken of distress. Of necessity, equity must employ a rule "as yielding as the leaden one of the Lesbian architect." Each case must be judged by its particular facts and circumstances, in order to ascertain whether it is just to allow the transaction in question to stand, or whether justice would be better subserved by setting it aside.

It is urged that the respondents neither had any hand in inducing the complainant to make the conveyance, nor were they aware at the time of the influences and circumstances which induced it.

These assertions are contradicted by the evidence.

It was from the respondents the pressure came which produced, and was intended to produce, the result attained. For what was it that the transfer of the mortgage debt was made to Haggin, except as an intimation to complainant that she was powerless and could make no defence?

DeWolf was fully aware of Mr. Hays' deplorable condition as well as the financial circumstances of Mrs. Hays. That knowledge he must have acquired from their relations and from being co-owner with Mrs. Hays of the property in controversy. Besides, Mrs. Hays testifies, that she stated to DeWolf, before signing the deed, the condition of her husband and the reasons why she was impelled to make the conveyance.

No attempt was made to impeach her evidence. It is a notable fact that the DeWolfs did not testify. In point of fact there cannot be said to have been any attempt made to disprove the evidence upon which the relief was accorded complainant.

It is not true, therefore, that DeWolf had no hand in causing the conveyance, or knowledge of the circumstances of making it.

But suppose he could substantiate this defense, should he be allowed to retain the fruits of the transaction? Suppose it was true "that the fruit had fallen of its own accord and without the necessity of shaking the tree," is there any principle of morality to justify him in retaining an advantage due to the weakness of another? That fact, we submit, would not impair the right of complainant to avoid the transaction, which enured to the benefit of the respondents.

Wheeler vs. *Smith*, 9 How., 83;
Central Bank vs. *Copeland*, 18 Md., 318.

The consciousness of having obtained an unfair advantage is shown by the haste in which endeavors were made by respondents to hide the property. Immediately after the deed of complainant to

Haggin (who was *persona interposita*), one conveyance followed another in quick succession, until the title came back into the name of respondents, and was then shifted into the name of Barnes. Not even an endeavor was made to show any real consideration for these conveyances.*

But, it is said, that the complainant was too late in coming into equity for relief.

The defense of laches was neither raised by answer nor demurrer. The Statute of Limitations was pleaded, but it is not now pretended that the statute applies.

The deed to Haggin was made January 16, 1877. The bill was filed May 7, 1884.

As we have seen, DeWolf left the State immediately after the deed was made, and kept away until 1884. As soon as he returned the complainant waited upon him, vainly supposing he might recognize the injuries she had suffered. But she was repulsed and referred to his counsel.

She thereupon at once filed her bill.

This Court, in setting aside a conveyance of property made by a woman under distressing circumstances, for a very inadequate consideration, say :

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*1877, Jan. 16. Release of Hays to DeWolf. R. 95.
1877, Jan. 16. Deed of Hays to Haggin. R. 96.
1877, Feb. 1. Haggin to Dimmick. R. 98.
1887, Feb, 12. Dimmick to Mrs. DeWolf. R. 99.
1887, May 1. Mrs. DeWolf to Evans. R. 101.
1878, Jan. 11. Evans to Howland. R. 101.
1878, April 15. Howland to Haggin. R. 164.
1878, April 18. Haggin to Mrs. DeWolf. R. 105.
1884, March 5. DeWolf to Barnes. R. 42.
1884, May 7. Bill filed. R. 1.

"The objection of the lapse of time—six years, before bringing the suit, cannot avail the defendant. If, during this time, from the death of witnesses or other causes, a full presentation of the facts of the case had become impossible, there might be force in the objection. But as there has been no change in this respect, to the injury of the defendant, it does not lie in his mouth, after having, in the manner stated, obtained the property of the deceased, to complain that her heir did not sooner bring suit to compel its surrender."

Allore vs. *Jewell*, 94, U. S., 512.

In *Insurance Co.* vs. *Eldridge*, 102 U. S., 547, the Court rejected a similar defense of laches, on the ground that the defendant was at all times cognizant of the facts by reason of which the priority of a lien was assailed; and for the additional reasons declared in the previous decision.

In the case at bar, the decree placed the parties in *statu quo*. No rights of third parties had intervened, nor had any improvements on the property been made.

Great stress seems to be laid on the allegation that the present confessed high value of the property has arisen subsequent to the making of the deed; and an attempt is made to show that the consideration for the execution of the deed was not therefore as inadequate as is charged.

The real question is whether the conveyance was the free and voluntary act of the complainant. If not, then she never consented thereto, and her deed will be held void.

The inadequacy of the price paid is, it is true, one,

among other circumstances, to show that advantage was taken of her.

In this case there was such inadequacy of price as to make it unconscionable of DeWolf to exact his bargain. The evidence shows that DeWolf had the money of complainant in his hand for investment,—the proceeds of the sale of property sold on his advice. He induced Mrs. Hays, on glowing representations of the value of the Fresno property, to allow him to invest the money in purchasing a one-half interest in the land there situated, owned by him. It comes now with a bad grace from the respondent to urge that the land was not really worth more than the amount of the mortgage.

The consideration for the sale by DeWolf to Mrs. Hays, of the one-half interest in the tract, was $23,435, all of which was paid, with the exception of $10,835, for which the note and the mortage were given. In her sworn bill in the suit in the State Court, introduced in evidence by respondent, complainant states that she paid for the property at the rate of $9.56 per acre. This was in 1872.

The bill shows how grossly she was deceived by DeWolf, and explains the statement therein contained as to the value of the land. That value had reference to the time when title was acquired in 1872, and to the adaptability of the land for sheep raising.

The respondents object to considering this bill as evidence, except in so far as they conceive it may be useful for the purpose for which they introduced it—that of showing from her statement the value of the property. (R., 91.) But surely the rule must be mutual. If used against complainant, the whole of it

must be taken together, as well as that which operates in her favor as that which makes against her. It is said that the allegation in the bill are *exparte* and not supported by evidence. But when the appellants had the opportunity to refute them, they failed so to do and, instead, interposed a dilatory demurrer and a motion for a change of venue.

Perrin, from whom DeWolf purchased the property, testified, on his behalf, that in 1877 the land was worth between $4 and $5 per acre; and if this testimony is to be credited, Mrs. Hays more than paid for the entire tract.

If the estimate placed on the value of the property, as stated in the deeds made in 1877—1878, could be relied on as *bona fide*, they would tell a very different story as to the value of the property from that the respondent would now have the Court believe.

Thus the deed of DeWolf to Evans of 640 acres states a consideration of $10,000. There was conveyed by complainant (R. 101), in her deed to Haggin, 2,080 acres. (R. 96–101.)

We should rather accept the statement made by the respondent as to the value of the lands, when he was desirous that complainant should purchase, than that now made, when it is to his advantage to depreciate the value.

It stands confessed on the record, that the complainant was, under the circumstances we have narrated, induced to release her entire interest in the valuable property in question, and to give up the large sum she had already paid, in consideration of the non-enforcement of the note given for a deferred payment.

If this question as to the increased value of the property has any materiality at all, we may fairly ask who should have the benefit of it?

Ought the respondent to reap the profit of his unfair advantage, or ought it to be enjoyed by the complainant, of whom advantage was taken? The answer which a court of equity must give to the inquiry is, that a party cannot be allowed thus to enrich himself at the expense of another.

The last objection to the decree is, that the court, in granting the relief to complainant, should have decreed the repayment to respondents of the mortgage note.

In their answer they say:

"As to Article XVI. of said complaint, these defendants deny that plaintiff is still indebted to them or to either of them the amount of said note or interest, either less the amount of rents and profits of said land or otherwise." (R. 30.)

In the face of this denial, it is difficult to see how, in the present suit, the court could grant them a relief which they did not seek and expressly refused.

All that the court below did was to put the parties *in statu quo*, existing before the conveyance by complainant to Haggin.

After the evidence had been introduced by respondents showing that there was a suit existing in the State Court impugning the note, the allegations of which had not been denied by the respondents, the court below, rightly declined to pass upon the question, by exacting from complainant the payment of the note.

But we do not understand, although there is the formal assignment of error on the point, that the appellants desire this court to accord them relief, other than the reversal of the decree and dismissal of the bill. This is their only prayer.

We do not deem it necessary to follow counsel for appellants in their labored explanations, and to point out the errors in their statement of what they allege to be the facts. We refer the Court to the evidence itself. It tells its own story.

It is well established that the exercise of Chancery Jurisdiction in decreeing the rescission of agreements and in administering similar relief, is regulated by the sound discretion of the Chancellor, as the circumstances of the individual case may dictate.

In the case at bar we submit, with confidence, that the discretion of the learned Judge below was guided by equity, and exercised in vindication of fair dealing.

The decree should, in all respects, be affirmed.

W. HALLETT PHILLIPS,
BEN. MORGAN,
Counsel for Appellee.

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to
Bismeier et ux

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Julia A Freeman

Wabash & Erie Canal Feeder

St. Joseph River

4.92 A

174 A

North Line

N 86 E 9.06 ch

Bloomingdale Road

Bells Ferry Road

Mrs Eliz Rudisill

S. South line of Section 35. T. 31. R. 12. E.

Elizabeth Street

Burgen Street

Ave

Ave

Hall Lot

Bushnell Hill

Description All that portion of the SE¼ of Section 35 Town 31 Range 12, bounded on the East side by the St Joseph River South by the Bloomingdale road - West by the Feeder to the Wabash & Erie Canal and on the North by the lands of Julia A Freeman, estimated to contain 13 acres.

Scale 100 Feet to 1 Inch

"Exhibit A"
Geo. D. Grant
June 24. 1880 Notary

Attest W. H. Goodhue

Geo. P. Bissell } U.S. Cis Ct.
vs
Abram G. Barrett et al } Exhibit A,

R. S. Robertson,

Location of mill Property and lands adjacent thereto - situated in the S.E¼ of Sec. 35 & S.W¼ of Sec 36 T. 31 N. R 12 E. of 2nd meridian.
Also a strip of land along the north line of a 320 A. tract situated in the forks of the St Joseph & St Marys rivers, being a pre-emption right granted to William Wells by an Act of Congress in 1808.
T. 30 N. R 1 E 2nd meridian

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Bissell et al.
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Randolph St
Eckhart's add.

No. 3.

Burgess avenue

Mrs. Rudisill Senr.
Homestead
Reserve S. line of Sec 35 T31 R12E

No. 4.
429 Acres

Hannas Plat C.
Lot 3

Sec 36.

No. 5.
54.7 acres

St Joseph River

Spy Run Avenue

Mill

Canal Feeder

Road to St Joe

Elizabeth St

Old corners found
a - Locust 4 inches dia N 17° E 35 feet
b - Elm 24 inches " W 31° 30' E 5 0 "

Scale 200 Feet to 1 Inch

I hereby certify the above Plat and notes correct
H. T. Goshorn
Dept Surv Allen Co

Geo. P. Bissell } U.S. Cir Ct.
vs
Abram G. Barnett et al } Exhibit A.

R. S. Robertson

Location of Mill Property and lands adjacent thereto - Situated in the S E ¼ of Sec 35 & S W ¼ of Sec 36 T. 31 N. R 12 E. of 2nd meridian.
Also a strip of land along the north line of a 320 A. tract, situated in the forks of the St Joseph & St Marys Rivers, being a pre-emption right granted to William Wells by an Act of Congress in 1808.
T. 30 N. R 12 E. 2nd meridian

No. 217
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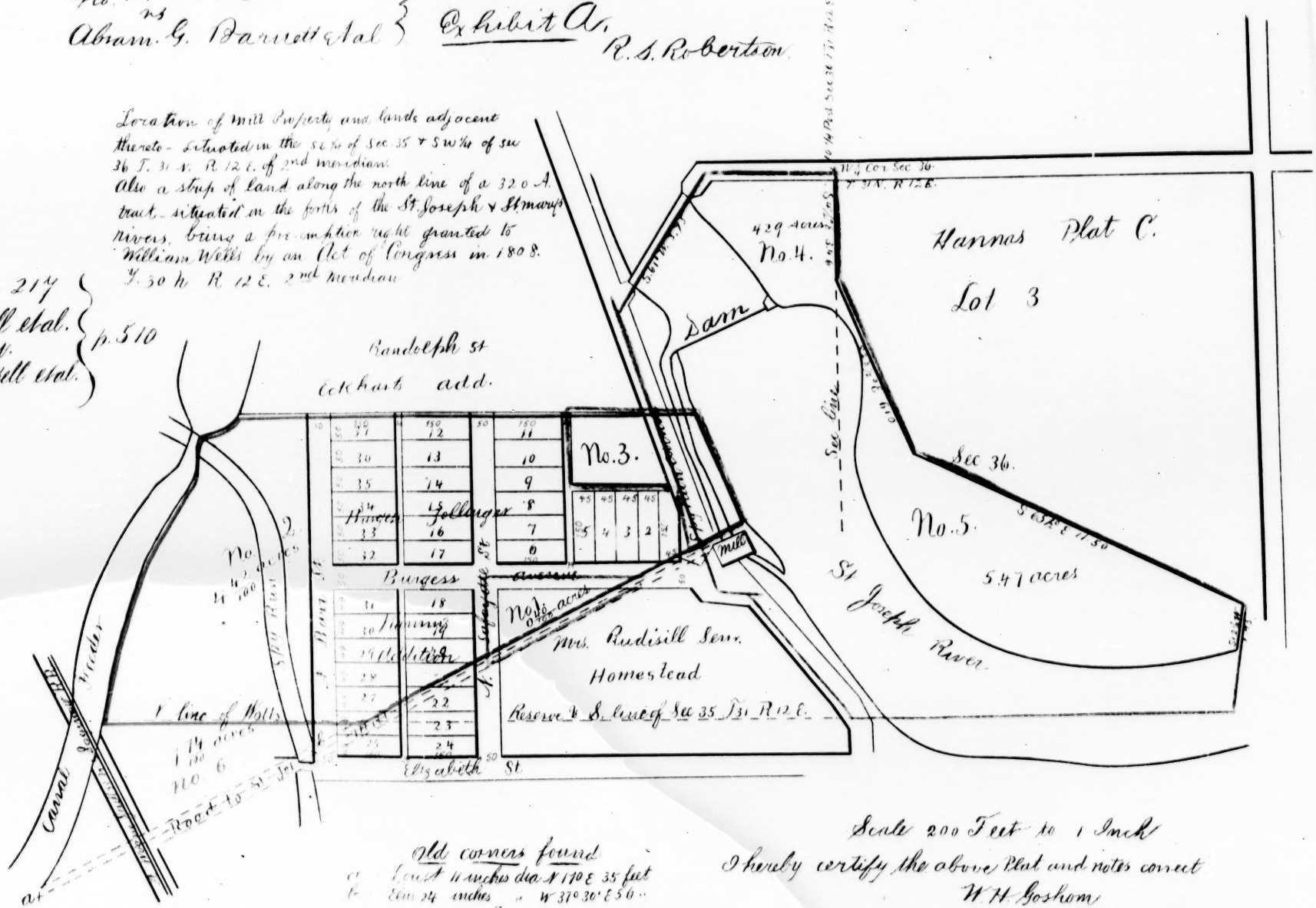

Scale 200 Feet to 1 Inch

I hereby certify the above Plat and notes correct
W. H. Goshorn
Dept Sur. Allen Co

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Geo. P. Bissell vs Abram G. Barnes et al } U.S. Cir Ct.
Exhibit A.
R.S. Robertson

No. 217
Wall et al.
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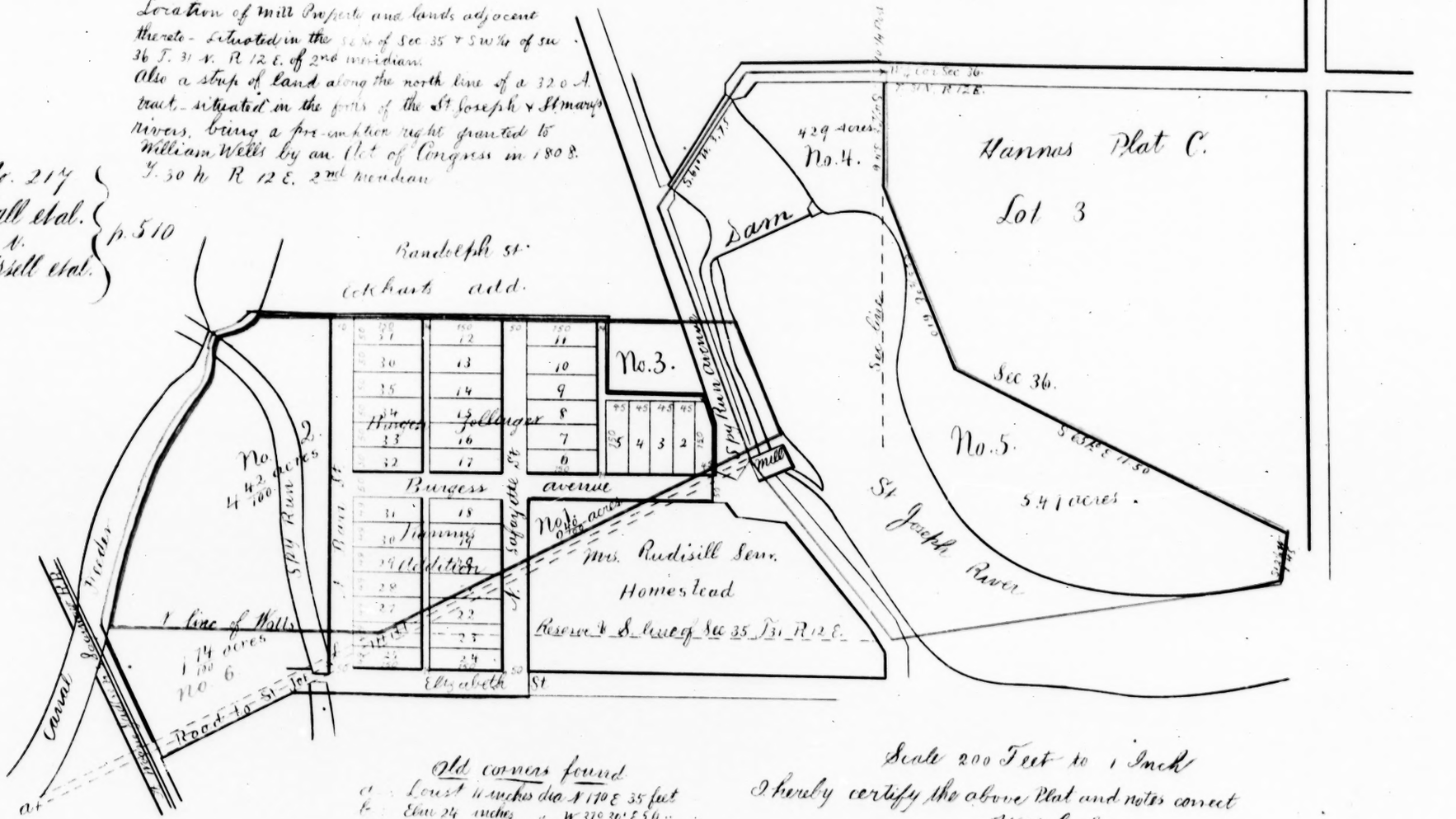
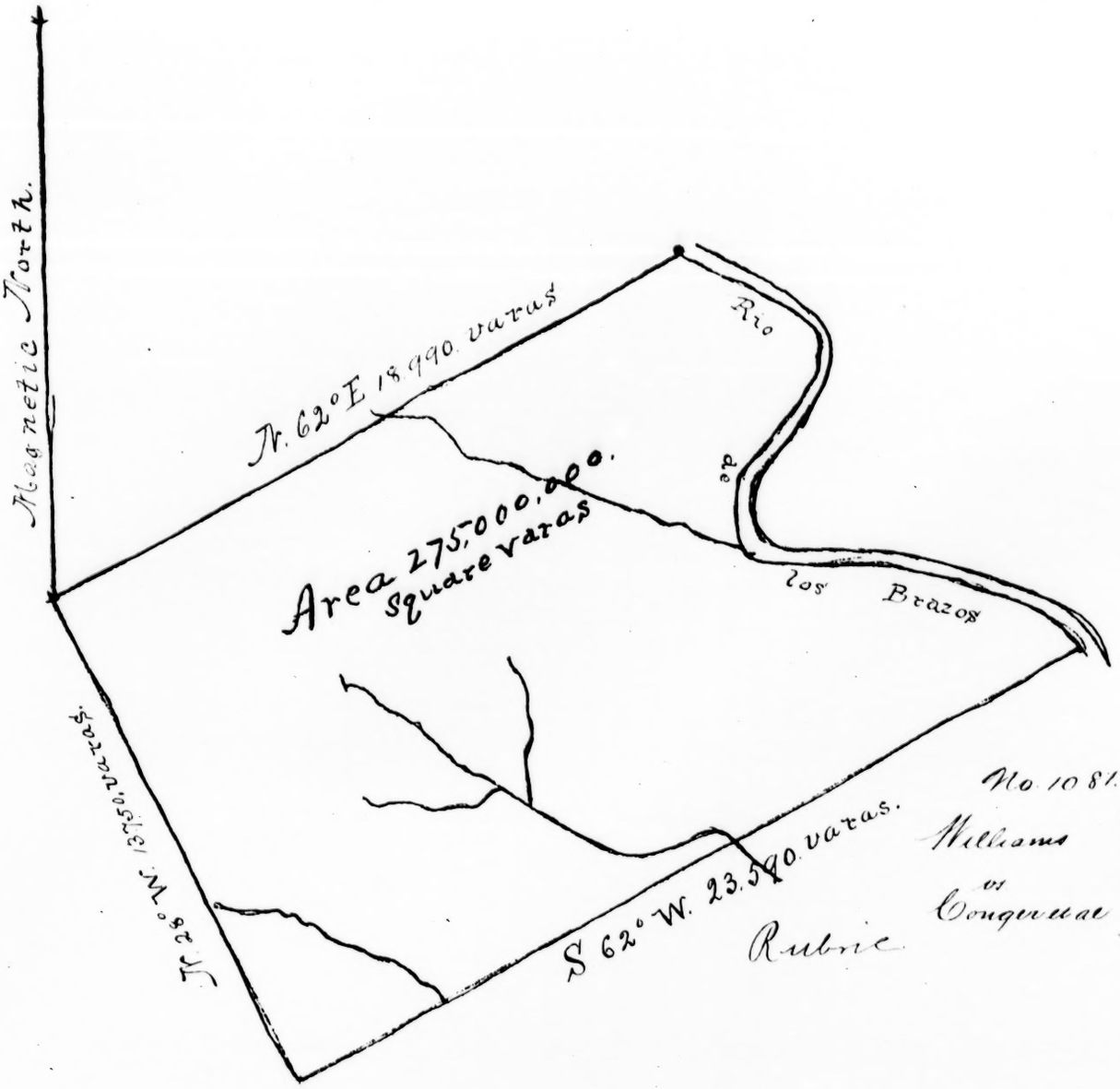
Location of Mill Property and lands adjacent thereto - situated in the S.E¼ of Sec. 35 & S.W¼ of Sec. 36 T. 31 N. R. 12 E. of 2nd meridian.
Also a strip of land along the north line of a 320 A. tract - situated in the forks of the St. Joseph & St. Marys Rivers, being a pre-emption right granted to William Wells by an Act of Congress in 1808. T. 30 N. R. 12 E. 2nd meridian



Old corners found
a Locust 14 inches dia N 17° E 35 feet
b Elm 24 inches " W 37° 30' E 56 "

Scale 200 Feet to 1 Inch

I hereby certify the above Plat and notes correct
W.H. Goshorn
Dept Sur. Allen Co



Plot Mal. for eleven leagues of land.

Surveyed for Don. Miguel Rabago.

(Signed.) José M. J. Carvajal.

Surveyor General.